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LAMBORN SUGAR RESOLUTION

HEARINGS

BEFORE THE

COMMITTEE ON AGRICULTURE

HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS

SECOND SESSION

APRIL 17 AND 18, 1922

Series X

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COMMITTEE ON AGRICULTURE.

HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS, SECOND SESSION.

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LAMBORN SUGAR RESOLUTION.

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Monday, April 17, 1922.

The committee met at 10 o'clock a. m., Hon. Gilbert N. Haugen (chairman) presiding.

There were present: Mr. Haugen, Mr. McLaughlin of Michigan, Mr. Purnell, Mr. Voigt, Mr. McLaughlin of Nebraska, Mr. Riddick, Mr. Tincher, Mr. Sinclair, Mr. Hays, Mr. Clague, Mr. Clarke, Mr. Aswell, Mr. Kincheloe, Mr. Jones, and Mr. Ten Eyck.

The CHAIRMAN. The committee has met this morning to give consideration to House joint resolution 284.

(The resolution referred to follows:)

[H. J. Res. 284, Sixty-seventh Congress, second session.]

JOINT RESOLUTION Authorizing the President to require the United States Sugar Equalization Board (Incorporated) to take over and dispose of two thousand tons of sugar imported from the Argentine Republic and adjust the loss sustained thereby.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized to require the United States Sugar Equalization Board (Incorporated) to take over from the copartnership, Lamborn and Company, a certain transaction entered into and carried on by said copartnership at the request, under direction, and as agents of the Department of Justice, which transaction involved the purchase in the Argentine Republic, between May 25 and June 15, 1920 of two thousand tons of sugar, the importation thereof into the United States, and the distribution of the same within the United States, and to require the said United States Sugar Equalization Board (Incorporated) to liquidate and adjust the entire transaction in such manner as may be deemed by said board to be equitable and proper in the premises, paying to the copartnership aforesaid such sums as may be found by said board to represent the actual loss sustained by them in said transaction, and for this purpose the President is authorized to vote or use the stock of the corporation held by him, or otherwise exercise or use his control over the said United States Sugar Equalization Board and its directors, and to continue the said corporation for such time as may be necessary to carry out the intention of this joint resolution.

The CHAIRMAN. Who is the first witness?

Mr. HUNT. Mr. Lamborn, the head of the firm of Lamborn & Co., is here.

The CHAIRMAN. Before we proceed, I would like to state that I have a request here from Mr. Bush-Brown, who desires to be heard on this Mount Weather proposition. He has appeared before the committee once before. Will you hear him to-morrow?

Mr. KINCHELOE. Why do they want to be heard any further? I got the impression that the committee was practically unanimous against the proposition.

The CHAIRMAN. The committee has agreed to hear Mrs. Boggs to-morrow and I presumed it might hear him at the same time.

Mr. KINCHELOE. What does Mrs. Boggs want to talk about?

The CHAIRMAN. About turning over part of the forest reserve for the use of the soldiers as recreation grounds and the committee had agreed to hear her in the morning, and I thought possibly we could hear Mr. Bush-Brown for a few minutes.

Mr. KINCHELOE. If they have any more supplemental statements to make, why not file them with the committee instead of taking up the committee's time with this Mount Weather proposition? We have had some hearings on that already.

Mr. MCLAUGHLIN of Michigan. If he has no more than what he had when he was here before to offer, I do not care to waste any time on it.

Mr. KINCHELOE. I do not, either.

Mr. ASWELL. I move, Mr. Chairman, that he be invited to file any supplemental statement he desires to submit.

Mr. JONES. I second that motion, Mr. Chairman.

(The motion being duly seconded, prevailed.)

The CHAIRMAN. We will hear you now, Mr. Lamborn.

STATEMENT OF MR. A. H. LAMBORN, OF THE FIRM OF LAMBORN & CO., 132 FRONT STREET, NEW YORK, ACCOMPANIED BY MR. DON M. HUNT, OF THE FIRM OF LAMBORN & CO.

Mr. HUNT. Mr. Chairman, we have prepared a statement of the facts in the case and we would like to have that made a part of the record before Mr. Lamborn goes ahead. It is a brief, concise statement of what the facts are, and then Mr. Lamborn and Mr. Riley will appear and be questioned on the subject.

Mr. ASWELL. Is that the Mr. Riley who was in the Department of Justice?

Mr. HUNT. Yes, sir.

Mr. ASWELL. Is he here?

Mr. HUNT. Yes, sir; he is sitting over there [indicating].

Mr. CLARKE. Are there any more of these sugar claims?

The CLERK. None filed here.

Mr. CLARKE. But are there any others?

The CHAIRMAN. We have some bills on the grain proposition.

Mr. CLARKE. I had reference to sugar claims.

Mr. MCLAUGHLIN of Michigan. What is the request; to have this brief printed in the record?

Mr. HUNT. Yes; it is a brief, concise statement of all the details in the case and is really in better shape than we could give it to you verbally. Of course, Mr. Lamborn is here to be questioned and to go into details in addition to the brief.

Mr. ASWELL. If you are going to print all this in the record, why do you want to be heard—if all the facts are here?

Mr. HUNT. All the facts are really there.

The CHAIRMAN. What is the pleasure of the committee?

Mr. MCLAUGHLIN of Michigan. A lot of this relates to the American Sugar Co. case.

Mr. LAMBORN. There is just a reference to the American Trading Co. case.

Mr. ASWELL. Why do you talk about the two cases that have already been acted upon by the committee?

Mr. LAMBORN. Only comparing them with our case, that is all.

Mr. CLARKE. May I ask why you did not come down at the same time the other sugar interests came down before our committee?

Mr. LAMBORN. We considered the matter a year and a half ago and we talked it over, and the firm of Lamborn & Co., composed of 11 members, discussed the matter, and then they decided it would be best to wait and see just how the other bills fared and how they got along.

Mr. CLARKE. In other words, to see whether you stood a show of getting away with it; is that the idea?

Mr. LAMBORN. Not exactly that; no, sir; but to let them lay the groundwork. There was no reason why we should all come in at once.

Mr. KINCHELOE. Is it not a fact that this was really a second thought with all of you—to come down and unload it on the Government if they could not get by with this proposition and got stung.

Mr. LAMBORN. That was not our thought, sir.

Mr. KINCHELOE. No; you are late in coming here, but after they took the initiative, then you are trailing.

Mr. LAMBORN. If they had not done so, we would have taken the initiative ourselves.

Mr. KINCHELOE. Why did you not do it then?

Mr. LAMBORN. We told them we were going to, and they said that they already had a bill up.

Mr. KINCHELOE. The truth about it is there is no love between the B. H. Howell claim and the DeRonde claim.

Mr. LAMBORN. We know nothing about that. There is no question of love about the matter at all. It is a quetsion of justice.

Mr. KINCHELOE. You seem to be very familiar with those claims from your allusions to them in this brief.

Mr. LAMBORN. We have naturally studied their case.

Mr. ASWELL. If the other bills had not been favorably reported, you would not have come.

Mr. LAMBORN. I think not.

Mr. ASWELL. That is what I thought.

Mr. KINCHELOE. You knew there was not a unanimous report from this committee as to those claims?

Mr. ASWELL. There was on the De Ronde case.

Mr. KINCHELOE. There was not a minority report filed.

Mr. ASWELL. No.

Mr. KINCHELOE. There was no minority report so far as the De Ronde case is concerned and I am frank to say that while I am against all of them, I think De Ronde has just as meritorious a claim as the others have.

Mr. ASWELL. I think a little better.

Mr. HUNT. I think our claim is as good or better than any one of them.

Mr. VOIGT. Have you ever had the Attorney General pass on this claim?

Mr. LAMBORN. We have never talked with the Attorney General about it.

Mr. ASWELL. I object to printing this brief in the record because it is a long discussion of the other claims which has no bearing on this case.

Mr. JONES. Mr. Chairman, it seems to me these people have a right to present their claim.

Mr. ASWELL. Certainly.

Mr. JONES. They may be a little late, but it seems to me they have the right to make references to similar claims that might have already been filed, and I think they have really done the committee a favor in presenting the claim in this way; if they have it in concise form and if they had made some effort to get it in concrete form for the benefit of the committee, and it seems to me, as a matter of fairness, that they ought to be permitted to put their condensed statement in the record. I would a good deal rather do that than sit here and listen to them read it all, and that is what was done in one or two other matters, and it seems to me that that is really a courtesy that ought to be given to them.

Mr. ASWELL. My position is that if they have a good claim, I am anxious to find out the facts, but I am not willing to have the Government go to the expense of printing all this stuff discussing the other claims that have been acted on by the Senate and by this committee.

Mr. JONES. If this were not filed, I would like to have a comparative statement along beside the other claims, and it seems to me that this is a rather proper way to do it. I did not vote for the other claims, and I do not assume I will vote for this one, although I may; at least, I would like to have the matter in the record, and I think the committee and the Congress, if the matter is reported, ought to have a complete statement.

Mr. ASWELL. The committee has been furnished with complete copies of it; what else do you want?

Mr. JONES. If the matter should be reported to the Congress, the Congress would not have access to a copy of it unless it was printed in the record. The Congress secures copies of the statements that are made by securing the printed hearings, and if these statements are not printed in the hearings the other Members of Congress who will be called upon to vote on the matter would not have access to the full statement.

Mr. KINCHELOE. What do you have reference to there that is objectionable?

Mr. ASWELL. I think we ought to print whatever these gentlemen wish printed on their case, but for them to go ahead and discuss the other two cases which have been acted upon, I think is none of their business.

Mr. KINCHELOE. I think you are right about that, and what I was anxious to do was by having this statement of their case to put it in the record and get rid of this hearing.

Mr. ASWELL. If that would shorten the hearing, I would be with you.

Mr. MCLAUGHLIN of Michigan. A large part of this statement relates to the other cases and has no relation whatever to this case.

Mr. KINCHELOE. I just picked it up and I have not looked through it.

Mr. LAMBORN. May I make this statement——

Mr. MCLAUGHLIN of Michigan (interposing). Any correspondence between these people and the Attorney General's department or the State Department that we have not already in the record, I would be glad to have, but this would be repeating a lot of matter that we already have, and I do not think it is necessary to print this in the record.

Mr. CLARKE. Have we got this gentleman's name here?

Mr. HUNT. My name is Hunt, and I work for Lamborn & Co.

Mr. CLARKE. In what capacity?

Mr. HUNT. I am in the legal department of Lamborn & Co., and I prepared this statement of facts.

Mr. LAMBORN. But he is an employee. He is not our general counsel.

Mr. JONES. It seems to me that these transactions all occurred along about the same time and they are all more or less mixed up with the same proposition, and I do not think a brief should be literally thrown out simply because it might make some reference to other claims and compare other claims that are of the same nature and happened at the same time.

Mr. LAMBORN. Mr. Chairman, may I offer the suggestion that we are not here to attack anybody else's claim. Either we deserve this money in return for the service we rendered at the request of the Government or we do not. On the other hand, on page 16 of this brief, we did make a comparison of our claim with the other claims in justice to ourselves, and we produced this brief so it would save both our time and the time of the committee, because most of this matter has been gone over at great cost to the Government and a great deal of your time personally has been taken on these other cases. I do not think you will find anything here except a statement of actual facts, with the exception of a comparison of our claim with the other claims that have been filed here, and we are not trying to attack those claims in any way. On the contrary, if they are just, we want them paid, just the same as we desire ours paid.

Mr. ASWELL. Just on that point, what I had in mind was that you say if you have a just claim you want it paid, and if you have not, you do not, and I agree with you; but you have no business discussing the other claims.

Mr. HUNT. The reason we discussed those claims is this——

Mr. JONES (interposing). When the other claims were discussed, the American Trading Co.'s representatives and even the Department of Justice made comparison with other claims that were filed in discussing their claim, and there has not been a claim presented to this committee that did not involve, to a certain extent, a discussion of comparative or contemporaneous claims.

Mr. VOIGT. Mr. Chairman, I would like to suggest that we will probably get about as long a record here by rag-chewing about this matter as we would if we let the statement go in as it is.

Mr. JONES. I think so, too.

Mr. LAMBORN. I am sure, Mr. Chairman, in comparison with the record already printed, that this brief is very short indeed.

Mr. ASWELL. But it is a repetition.

The CHAIRMAN. There are about 21 pages of it.

Mr. HUNT. I want to state in addition to that——

The CHAIRMAN. What is the pleasure of the committee?

Mr. ASWELL. I move that the gentleman be heard and the brief they have be left in the hands of the members of the committee.

Mr. JONES. I move as a substitute, Mr. Chairman, that the request for printing of the brief be granted.

(The motion as amended by Mr. Jones, having been duly seconded, prevailed.)

Mr. HUNT. We have here the original documents referred to in that statement that are subject to your inspection, and we will leave them with the committee if you desire it. They have all been printed in the statement of facts, but here are the originals and we can file them with the clerk. They are the telegrams and the correspondence relative to this claim.

The CHAIRMAN. What is your request?

Mr. JONES. They are printed in the brief.

Mr. HUNT. They are printed in the brief and I want to leave these with the committee for whatever the pleasure of the committee is with regard to them. They are the originals.

The CHAIRMAN. Mr. Lamborn, you may proceed.

Mr. MCLAUGHLIN of Michigan. I would suggest printing in the record letters from Mr. William A. Glasgow, jr., who is counsel for the Sugar Equalization Board. This letter is in answer to a letter written to him by the chairman of this committee, the last one suggesting his attendance at this meeting. In reply he speaks of these claims.

Mr. ASWELL. Will he be here, Mr. McLaughlin?

Mr. MCLAUGHLIN of Michigan. He says he is not able to attend to-day.

The letters referred to as being written by the Chairman were written at the request of Mr. Glasgow, who requested to be notified.

Mr. ASWELL. May I inquire whether the chairman of the committee knows what the Sugar Equalization Board is doing, what serviceable record it is making, and how much expense is it enjoying now or how much it has spent for the past two or three years

The CHAIRMAN. We have not had any report on that.

Mr. ASWELL. I think the committee ought to have that report. If we let them go on for 30 years they will spend the $30,000,000 they have in the Treasury.

The CHAIRMAN. My understanding is that the excuse for continuing it is that there are some cases pending.

Mr. ASWELL. Are they drawing salaries and having expense accounts still?

The CHAIRMAN. I have no knowledge of that.

Mr. ASWELL. Would it be in order for this committee to request information along that line from the Sugar Equalization Board? I do not want to suggest it if it would not be proper. I think this committee should have the facts as to the amount of money they are spending monthly.

Mr. JONES. I think so too, Mr. Chairman.

Mr. ASWELL. And what they are doing and whether they have authority in law to disband and turn this money over to the Treasury without any further drawing out of expense accounts and salaries for stenographers, etc. I understand they still maintain two offices, one in Philadelphia and one in New York. If it is a proper thing, I would like to make a motion that the Sugar Equalization Board be requested at once to furnish this committee with detailed information as to the amount of expenses for the past two years to date.

The CHAIRMAN. Do you make that request in the form of a motion?

Mr. ASWELL. I make that as a motion.

Mr. TINCHER. I second the motion.

Mr. VOIGT. Mr. Chairman, that is not relevant to the resolution that is pending before this committee.

Mr. ASWELL. I did not make it in connection with the resolution at all.

Mr. VOIGT. Well, there is not anything before this committee on which a motion of that kind could be based.

Mr. TINCHER. I think it would be pertinent. I think it is a thing we could bring in here when inquiring into these claims.

Mr. ASWELL. I think it would have something to do with the urgency of settling up these cases and dissolving that board and saving the expense.

Mr. VOIGT. Whether the Sugar Equalization Board is spending $100 a month or $50,000 a month I do not think would have any bearing on the justness of this claim.

Mr. ASWELL. It would not have anything to do with that, but it would give some information to this committee as to whether we should reject the claim or should act upon it quickly and get rid of the whole thing.

Mr. VOIGT. I do not see how it would affect the matter one way or the other.

Mr. ASWELL. It would, if we could save $50,000 a month.

Mr. VOIGT. If the United States Government ought to pay this claim it ought to pay it no matter what the Sugar Equalization Board is doing or whether they are spending $100 a month or $50,000 a month.

Mr. ASWELL. Would it not be an economy for the United States Government to stop this expense in a reasonable time?

Mr. VOIGT. It might be, but that is not incident to the matter before the committee.

Mr. ASWELL. I think it would be valuable information for the committee.

Mr. VOIGT. That may be, but the question now is whether this committee ought to call for that information without having anything before it.

Mr. ASWELL. We want to get something before it and that is the reason I made the motion.

Mr. VOIGT. There is no resolution of inquiry before this committee.

Mr. TINCHER. Mr. Glasgow is taking an interest or is manifesting an interest in these claims and is writing letters about them. He has testified for some of the claims and is slurring other claims. I do not know whether he is on salary from this Government or not, and I do not know who does know.

Mr. ASWELL. I would like to know.

Mr. TINCHER. Yes; I am with you on the motion. I agree with you once. Let us find out and bring the facts in here.

Mr. JONES. I think it is very important to know what they are spending and why.

Mr. ASWELL. I want to know what is behind these things and what salaries they are drawing.

Mr. VOIGT. Mr. Jones, do you think it is important to know that with reference to this matter?

Mr. JONES. No; I think this is perhaps an unhappy place to bring it in, for that matter, but it is information that the committee ought to have.

Mr. TINCHER. Suppose some one wanted to discuss the Sugar Equalization Board on the floor of the House when some of the bills are up for consideration. He ought to have the privilege of knowing all about Glasgow. When Glasgow was here he did

not know much about the Sugar Equalization Board, and I tried to find out some things from him, and I think for the committee to call for all the facts, as to what salaries they are paying, what expenses they are under, and how they are getting by with this thing would absolutely be information we ought to have in the record.

Mr. McLAUGHLIN of Michigan. If I could see that it had any bearing on this claim I would agree with you, and I would be willing to ask them for it at another time in another connection, but on this matter I do not see that it has any bearing at all.

Mr. ASWELL. I stated in making the motion that it had no connection with this claim, but I wanted the information. I have wanted it for several months, but we have not had but one meeting of the committee for some time.

Mr. JONES. I think the resolution or the motion should be separate from this particular claim.

Mr. TINCHER. Glasgow is knocking this claim and has knocked all of them except one, and I think it is a good time to have a show-down with those fellows.

Mr. VOIGT. Mr. Chairman, I do not want to stand in the way of these gentlemen getting any information they are entitled to, but as this matter stands, I am going to vote against the motion. If some member of this committee will introduce a resoultion calling for this information, independent of this claim, or introduce some resolution of invetigation, I will be glad to vote for that sort of motion, but I am not going to clutter up or complicate this proceeding before the committee now by an inquiry into the Sugar Equalization Board. I do not think it is fair to the people now before the committee.

Mr. ASWELL. I made the motion as a separate matter entirely, with no connection with the resolution now pending.

The CHAIRMAN. Are you ready for the question?

Mr. TINCHER. I do not want to delay matters. I was a little late getting here this morning but I have heard a good deal about these sugar claims. I am going to support the motion and I think in doing so I am doing the people who are presenting this claim a favor.

Mr. ASWELL. Certainly; so do I.

Mr. TINCHER. Because here is a man who sits up there and protests against anything except one claim. His evidence is in the record very strong for that claim and he continues writing to the committee, and I think in order for the House to act intelligently and for the Members to be fully advised, every member of this committee ought to be able to answer the questions, what has become of the Sugar Equalization Board since the war, are they maintaining offices, are they paying themselves big salaries, what is the attitude of this man Glasgow? Does he get a salary from the board or is he paid from some other source.

Mr. JONES. In other words, why a Sugar Equalization Board?

Mr. TINCHER. Yes; why a Sugar Equalization Board now? I think we ought to be informed on that when we go on the floor of the House with any of these claims, and I think it is pertinent for the committee to have that information. I do not think if is any reflection on any of the gentlemen who have any claims here. I do not know whether these gentlemen are advised or not. I have not read this letter, if you have a late one, but the last letter I read from Glasgow, he simply served notice on this committee that we must not pay but one claim, and we must do that quickly.

Mr. McLAUGHLIN of Michigan. No; you are unfair to Mr. Glasgow in that.

Mr. ASWELL. That is substantially what he said.

Mr. TINCHER. I may have misconstrued his letter a little, but that is the way I understood it.

Mr. TEN EYCK. What is the difference whether we ask it now or ask it in a separate resolution? How would it clutter up this claim, Mr. Voigt?

Mr. VOIGT. I think it is unfair when you are investigating a claim here to tie that up with investigating the Sugar Equalization Board. Furthermore, it is an extraordinary proceeding for this committee to start an investigation of the Sugar Equalization Board—and that is what it amounts to—without having any resolution or anything of that kind before the committee which would warrant the committee in making such an investigation.

Mr. ASWELL. Having no information is why I made the motion, because we need the information.

Mr. McLAUGHLIN of Michigan. This claim, as other claims, depends on the relation of the claimant to the Department of Justice or to the State Department, and so on, at the time the transactions were made, or at the time the arrangement was entered into, and the present conduct of the Sugar Equalization Board has no bearing whatever upon it.

The CHAIRMAN. Are you ready for the question?

Mr. KINCHELOE. What is the question, Mr. Chairman.

Mr. ASWELL. Asking for information about the Sugar Equalization Board; how much salaries they are paying and the expenses they have.

Mr. JONES. And what they are doing.

Mr. KINCHELOE. Do you mean to invite somebody down here?

The CHAIRMAN. Your motion does not include any investigation, but simply a request?

Mr. ASWELL. The chairman is requested to ask the head of the Sugar Equalization Board to report in detail the expenses in the last two years and give the claims of individual persons paid.

The CHAIRMAN. And the money on hand as a balance?

Mr. ASWELL. Yes.

(The motion, having been duly seconded, prevailed.)

The CHAIRMAN. You may proceed, Mr. Lamborn.

Mr. LAMBORN. I would like to state that one of the gentlemen made the remark that there seems to be some bitterness, as I think he said, among the contestants here. Now, we do not know Mr. DeRonde. I met him on the ocean in 1919 long before this happened. I met his uncle to-day for the first time. I have known B. H. Howell Son & Co. for the last 30 years. I do an enormous business with them. I have no bitterness against them at all, and when the question was asked why we had cluttered up this brief with a comparison of the other claims I tried to make it clear that we were not making a comparison except to show that we were actual merchants and that we were not being used indirectly but directly, and that we operated the minute the department called us. We brought in the sugar and it actually arrived here eight days before the DeRonde sugars left the Argentine and nearly four weeks before Howell & Co. sugar left. We are not saying that that was their fault. They undoubtedly did the best they could, but we feel we have a right to make our own statement irrespective of theirs, as well as in comparison with theirs.

Mr. ASWELL. May I interrupt you there? If your sugar arrived eight days before the other shipments left the South American country, that was long before the price went down, and you should have gotten a good price for that sugar.

Mr. LAMBORN. It was not before the price went down, because these sugars were not known in the United States. We did not even have samples in our office at that time, and when we tried to sell the sugars we could not, and when the market commenced to break in July, 1920, no one could sell sugars. It was a physical impossibility. Days and days passed without any refiner or any merchant being able to sell a pound of sugar.

Mr. ASWELL. At what time did your sugar arrive here?

Mr. LAMBORN. On the 21st of July, and the market was then in a most chaotic condition and it stayed that way for months and months. We acted just as quickly as we could. We tried to sell the sugar and could not. We consigned the sugars to Pittsburgh, Columbus, Indianapolis, Chicago and Grand Rapids. I have not before me the entire list but Mr. Hunt has a list of where the sugars went to. We sent them out on consignment and told them to sell at the best price immediately, and they could not sell them.

Mr. VOIGT. Did you have an agreement limiting your profit to 1 cent a pound?

Mr. LAMBORN. We had no specific agreement but that was generally understood with the department, that no one would sell sugars at more than 1 cent per pound profit, and as a matter of fact, we sold our sugars at less than 1 cent a pound profit—that which we could sell.

Mr. KINCHELOE. Was there any contract about who was to take care of you in case you lost?

Mr. LAMBORN. No, sir.

Mr. KINCHELOE. Nothing was said about any loss?

Mr. LAMBORN. No, sir; at the time nothing was said about that because our own——

Mr. KINCHELOE (interposing). Was anything said until the market began to break?

Mr. LAMBORN. No.

Mr. KINCHELOE. It was the same way with the other fellows?

Mr. LAMBORN. I judge so. I do not know what conversations they may have had, but I judge from their testimony that nothing was said about it.

Mr. KINCHELOE. How much do you claim your loss is?

Mr. LAMBORN. I think it is over $570,000, and I think it is attested to by our comptroller—and bear in mind, gentlemen, that we are only making claim for loss on these particular sugars. These were the last sugars we contracted and imported, and we did not want to import any of them because we believed the market was at the top

and we had refused to import any further sugars. I had told my partners time and again that we would not contract to bring any further sugars into this country, but at the department's request, on these Argentine sugars, specifically, we did bring them in.

Mr. TEN EYCK. Had you been bringing sugar in before this?

Mr. LAMBORN. We had contracted to bring in enormous quantities and this was the last contract we entered into.

Mr. TEN EYCK. What was the profit on the sugar you brought in previously?

Mr. LAMBORN. The profit was less than 1 cent a pound on all of them as the Department of Justice records will show. We made a complete statement on that. I do not know whether it was under oath or not, but at the request of the department and Mr. Riley's subsequent request, we gave them as quickly as we possibly could a complete statement of that. We had to keep our clerks at work at night working on an enormous amount of detail in order to do that.

Mr. TEN EYCK. And in no instance did you charge over 1 cent a pound profit?

Mr. LAMBORN. As far as I know, in no instance, except possibly where we had toll arrangements, where we could not tell what the difference would be until the toll was actually made by the refiner.

Mr. MCLAUGHLIN of Michigan. My understanding of this matter is that it is the same as the others, and it is a question of the relation of these parties and the agents of the Government, the Department of Justice and the Department of State, if they were acting with the Department of State, as one of the other companies was—it is a question of whether or not there was an express or implied contract with these parties.

Mr. ASWELL. That is the first thing to establish.

Mr. MCLAUGHLIN of Michigan. It is a question of the capacity in which these gentlemen acted. I suggest that this witness, if he knows, begin at the beginning and tell his relations with the departments of the Government.

Mr. LAMBORN. May I be permitted to state just what our firm is, not with the idea of increasing the record here, but to let you know who we are, so you will have no doubt about who we are in the sugar business.

Mr. ASWELL. Go ahead.

Mr. LAMBORN. I have been in the sugar business since 1889. I have been in business for myself since July 1, 1891. We are probably the largest distributors of refined sugar in the United States. We do an enormous importation of raw sugars into the United States and we do an enormous export business of both refined and raw sugar throughout the world. At the present time we are exporting refined sugar from America to practically every point from here to China, including the Black Sea ports like Constanza and Constantinople, to Port Said, Alexandria, all the Scandinavian ports except Sweden, and Russia. We are even shipping some to Hamburg, Germany. We are shipping large quantities to Holland, large quantities to France, and still larger quantities to Great Britain. I make this statement because we are in the sugar business, always have been in the sugar business, and while it is true we are members of all the exchanges, including the New York Stock Exchange and the cotton, sugar, and coffee exchanges, and the produce exchange and the board of trade, nevertheless sugar is my life. And when we were approached by the department we naturally continued on this thing, although at that time we were against further importations. But prior to this time we had contracted to import sugars for future delivery and had imported sugars from Java and from China. We had contracted to import sugars from Java and from Mauritius in very large quantities. We had bought sugars to help the situation here from Belgium, from Holland, from England, and from France.

Mr. RIDDICK. Right there, Mr. Lamborn, did you bring in that sugar at the request of the department or not.

Mr. LAMBORN. No, sir; we brought them in on our own initiative, as merchants, knowing that the demand was here.

Mr. RIDDICK. Just as an ordinary merchandising proposition?

Mr. LAMBORN. Yes, sir.

Mr. RIDDICK. What was your profit per pound on that sugar?

Mr. LAMBORN. Not more than 1 cent per pound.

Mr. RIDDICK. In other words, 1 cent a pound was the normal profit on sugar?

Mr. LAMBORN. Most of it was sold at a great deal less than that.

Mr. RIDDICK. Was it sold at a normal profit of 1 cent a pound?

Mr. LAMBORN. Now, if you mean to say normal in the sense of price, yes; but simply because the price had advanced from 6½ cents on raw sugar to 23½ cents. When the price was 6½ cents we made very much smaller commissions because that was the

normal price of sugar; but when the market became higher, the department allowed all the merchants to make from one-half a cent to a cent a pound, and we naturally made that profit because the risk was enormously greater.

Mr. RIDDICK. The point I wanted to bring out was whether you brought in a lot of sugar for the Government or not.

Mr. LAMBORN. This particular lot is the only lot we brought in at the Government's request.

Mr. RIDDICK. I understood you to say just now that the sugar you brought in formerly was at the request of the Government.

Mr. LAMBORN. No, sir; not any of it. I thought I made that clear. If that were so, we would have claims against the Sugar Equalization Board for many millions of dollars, because during the decline of sugar, the repudiations throughout this country were enormous. Our own repudiations extended to over $4,000,000, and practically none of that money have we been able to collect from the repudiators as yet.

Mr. RIDDICK. I am like Mr. McLaughlin, and would like to know just what arrangements you had with the Department of Justice.

Mr. LAMBORN. Prior to this contract or during the entire period.

Mr. RIDDICK. Any arrangement you had.

Mr. TEN EYCK. What you want are the statistics or the correspondence or anything in writing showing the arrangement.

Mr. RIDDICK. Yes; the record of your contract.

Mr. TEN EYCK. Yes.

Mr. LAMBORN. Some of you gentlemen want it from the beginning and some of you want it in regard to this particular contract. I think I can make it very clear and easily understood by making a short statement. When the Department of Justice in the fall of 1919 took charge of the handling of sugar, when the President turned the Equalization Board's work over to the department, they announced that they did not want a greater profit——

Mr. MCLAUGHLIN of Michigan (interposing). Where is their announcement.

Mr. LAMBORN. It was published all over the United States, in every paper, through all the food officers in New York, Philadelphia, and wherever we may have had our offices.

Mr. MCLAUGHLIN of Michigan. What was it?

Mr. LAMBORN. To the effect that a greater profit than one half a cent a pound, at first, would not be tolerated, and later on they said that not more than 1 cent a pound profit would be tolerated.

Mr. MCLAUGHLIN of Michigan. You had a license, did you not?

Mr. LAMBORN. Oh, yes; certainly.

Mr. MCLAUGHLIN of Michigan. Did not the license set forth the profit you would be entitled to receive?

Mr. LAMBORN. No, sir; no license on food control set forth the profit, as far as I know, unless it was on wheat.

Mr. TEN EYCK. Is it not a fact that if everybody was kept down to a cent, you could not get 2 cents, even if you wanted to.

Mr. LAMBORN. No; we could not.

Mr. JONES. Was that true of all sugars regardless of whether they came from the Argentine or not; that is, all the sugars you imported from anywhere?

Mr. LAMBORN. It is true of all the sugars we sold.

Mr. JONES. Then all the sugars that you sold were sold at a profit of not more than 1 cent a pound?

Mr. LAMBORN. At a profit of not more than 1 cent a pound during the fall of 1919 and all of 1920.

Mr. JONES. And regardless of whether you were requested to bring them in by the Government or not?

Mr. LAMBORN. Regardless of whether we were requested to bring them in by the Government or not.

Mr. VOIGT. Will you state how you came to import this sugar from the Argentine?

Mr. LAMBORN. On May 7, I have before me a telegram sent by Howard Figg—I think it is embodied in this brief we are presenting—asking our firm to meet him in Washington at the office of the Department of Justice on May 10 at 11 o'clock a. m. I have not the telegram postponing it, but apparently it was postponed, because we did not come on May 10, and they undoubtedly either telegraphed or telephoned to us not to come then.

Mr. TEN EYCK. Will you not explain right there who this man is who telegraphed to you?

Mr. LAMBORN. Howard Figg, as I understand, was an assistant to the Attorney General of the United States. Just what his duties were I do not know. We had nothing to do with him at any time except these telegrams and our replies and meeting him at the Department of Justice. He never came to our office. On May 17 he sent a subsequent telegram asking us to be at the office of the Department of Justice on May 20 at 11 a. m. We arrived there on May 20, to find that the Attorney General was not there, and as Figg did not wish to meet us by himself, they asked us to postpone our visit to the department until the following day, and on the following day we met the Attorney General, with Mr. Figg, Mr. Riley, and Mr. Garvan.

Mr. MCLAUGHLIN of Michigan. Who was he?

Mr. LAMBORN. Mr. Garvan was another Assistant Attorney General. At this meeting there were the importers of sugar, both raw and refined, from New York, Philadelphia, Boston—all of the leading importers—in fact, it was a meeting of the importers and not of the refiners. No refiner was present. We did not know until we heard from the Attorney General what was the object of the meeting, but the object of the meeting was to discuss the importation of sugars. The department at this time had a statistician, and they had compiled figures which indicated that the country would be bare of sugars during the fall, and Mr. Palmer made a very strong, almost an impassionate appeal to all of us to scour the earth, as he put it, and bring in sugars from all parts of the earth.

We asked him or rather I asked him before the meeting took place, because at that time there was a great deal of talk against any one who was in the sugar business, whether they were trying to conduct their business along the lines the department laid down or otherwise—I asked him if he would give us a copy of the minutes of the meeting. He promised that he would, and two or three days later we received a one-page memorandum which simply indicated that the meeting had been held, and I did not know until very long afterwards that the reason was the testimony was given so fast, and there were so many people talking at once, and they did not have a court stenographer or an official stenographer, and the man they had was unable to furnish a copy of it, and I never got the minutes of that meeting; but I did take the precaution, before the meeting opened, to ask the Attorney General if he would supply us with a copy of the minutes.

Mr. ASWELL. Were you the only importer that responded to that request.

Mr. LAMBORN. What request? The request for a copy of the minutes.

Mr. ASWELL. No; the request to import this sugar.

Mr. LAMBORN. So far as I know, of all the importers at that meeting we were the only ones. In fact, I am quite certain of that.

Mr. TEN EYCK. All the rest had been invited.

Mr. LAMBORN. All the rest were not only invited but importuned, and, as near as I can remember, beseeched, in the interest of the Government of the United States and the people of this country, to scour the earth and bring in sugars; and at that time not only I laid before Mr. Palmer, but others did the same thing, the tremendous risk we would be at. In fact, at that very meeting, my Philadelphia office telephoned me and made me an offer for 7,000 tons of raw sugar at 23½ cents per pound for centrifugal raw sugar from Cuba, and I made that offer to Czarnikow and to E. Atkins & Co., two of the very largest exporters of sugar from Cuba and also growers of sugar, and they both declined it, and of course, the Attorney General felt right away, if they would not take 23½ cents for raw sugar, where is the price of sugar going?

Mr. PURNELL. May I interrupt you right there? I am sorry I was called out and I did not get the full thread of your story, but at the time you suggested the possibility of a loss, did you follow that up with any discussion?

Mr. LAMBORN. I made this statement to him: I said, "You are limiting the importer to 1 cent a pound, and with the risk at the present prices, we have no pillow to fall back on in case the market breaks, and we believe that the price of sugar is now too high." They had their own statistician there and some one at that meeting remarked, "We have our own statistics and we have the departments of the United States to prepare these statistics," and naturally we were not going to be so immodest as to say that our own statistical department was of superior value to the country than the Department of Justice's statistics.

Mr. PURNELL. Did anybody on behalf of the Government directly or by innuendo suggest that if any loss was sustained, the Government would take care of it?

Mr. LAMBORN. The question of loss was not mentioned. At the time I made that statement I thought, and others undoubtedy felt the same way, because the whole spirit of the meeting was that the price was too high. At that time sugar was selling at 23½ cents and there were some sales made afterwards at 25 cents, but we termed the maximum price of raw sugar at that period to be 23½ cents a pound, which was the

highest price for 70 years. I stated to Mr. Palmer at that time, "If you ask us on our own credit to go to our banks and get credits to bring in enormous quantities of sugar from various parts of the earth, especially from the nethermost ends of the earth, like Java, where the principal white sugars are available, it would take 50 or 60 days to get them, and by that time the market could break, and if there was a decline we would have to stand that loss."

Mr. PURNELL. What was his reply to that?

Mr. LAMBORN. I can not, either in fact, or in substance, state what his reply was, but his attitude and, in fact, the subsequent attitude of the department, even under Mr. Riley in New York, was this: That the price must naturally advance; that there was going to be a definite scarcity of sugar not only then but in the fall and in the winter months; and in fact, as late as October 1 the statistician connected with Mr. Palmer's department issued statistics showing even at that time, when the market was utterly demoralized, when you could not sell sugar at any price to any one, either raw or refined, that there was going to be a shortage at the end of the year.

Mr. KINCHELOE. Right at that time there was no thought on your part of a loss. That was not discussed at all, was it?

Mr. LAMBORN. Now, you are putting my answer in a wrong way.

Mr. KINCHELOE. I am simply asking you whether or not that is true.

Mr. LAMBORN. In answer to that, I would say that we had definitely adopted a policy, as Lamborn & Co., not to import any additional refined sugars, white sugars or semirefined sugars. The department's attitude was that the price could not decline and they were there begging to bring in sugars, and when I say "begging" I mean literally begging us to bring the sugars in.

Mr. KINCHELOE. And therefore there was no discussion about a loss and no thought of a loss at that time; is not that true?

Mr. LAMBORN. I think I have made the statement here that we went back at the department and told Mr. Palmer at that time we did not feel like taking the risk and the responsibility on our credit with the banks and with our own money of bringing additional sugars in, on account of the fact that if the market went down, while we were only allowed 1 cent a pound profit on these sugars, yet we would have to suffer the loss, and he, as I say, I can not swear to it—I presume I am under oath; is that right, gentlemen?

Mr. KINCHELOE. No; you are not under oath.

Mr. LAMBORN. Well, my word is just as good as an oath, I hope. I can not swear that he in fact or in substance used the words, "the market can not go down," but the atmosphere was surcharged with that idea. There is no doubt of that whatsoever.

Mr. KINCHELOE. Did Mr. Palmer or anybody else on the part of the Government represent to you directly or by innuendo that the Government would stand any loss that might occur by reason of your bringing in this sugar?

Mr. LAMBORN. He did not.

Mr. ASWELL. Would he have had any authority to do that?

Mr. LAMBORN. That I do not know.

Mr. KINCHELOE. Would you allow me to ask you right here who prepared this brief?

Mr. LAMBORN. Mr. Hunt, here.

Mr. KINCHELOE. I notice on page 18 it says:

"There can be no possible question as to the legality of this plan to relieve the shortage of sugar as adopted by the Department of Justice. The former Attorney General in his hearing before the House Committee on Agriculture, page 38, states"——

Mr. LAMBORN. Where is that, please?

Mr. KINCHELOE. That is near the bottom of page 18:

"The present Attorney General agreed with the former Attorney General that the Government is legally and morally bound to pay on these obligations."

And then they quote a part of Mr. Tincher's questions. Now, that is not true, and is very unfair. First and foremost, if Mr. Palmer ever stated before this committee or any other committee in Congress that there was a legal obligation, I do not know anything about it.

Mr. LAMBORN. I think it is in the record, sir.

Mr. HUNT. I have only quoted his statement.

Mr. KINCHELOE. And now I want to show that you are unfair about this proposition to Mr. Daugherty. You say here that the present Attorney General agreed with the former Attorney General that the Government is legally and morally bound to pay on these obligations. On page 78 of these hearings, I said this to General Daugherty:

"Mr. KINCHELOE. General, do you think, as a matter of law, that if this American Trading Co. should go into a court of proper jurisdiction the court would hold that the contract undertaken to be entered into by the Department of Justice, with the acquiescence of the State Department, would not be an ultra vires contract?"

Mr. LAMBORN. We have quoted his statement here.

Mr. KINCHELOE. You first make the statement that both of the Attorneys General said that this was a legal obligation and a moral obligation.

Mr. LAMBORN. I think they both did.

Mr. KINCHELOE. Now, wait until I get through. Here is Mr. Daugherty's answer on page 78:

"Mr. DAUGHERTY. Of course that involves the question of what a court would do. I am giving my opinion. I think the court would look at all the facts and consider the vicissitudes of the country and the general authority of the Executive and the good faith of the transaction, and, as I say, I am rather of the opinion that if the court took jurisdiction, which it probably would, they would hold that there was a legal liability."

Then I asked him this question:

"Mr. KINCHELOE. The point I am making is, do you think they could get jurisdiction and have this adjusted in a court?

"Mr. DAUGHERTY. I have not examined that question. That was not the question presented or considered. I will have to consider that as to where the jurisdiction would lie; if the court would entertain a suit of this kind I would think that the court would entertain jurisdiction, but I would not want to say that without looking it up and considering it carefully."

The Attorney General did not say there was a legal obligation and Mr. Palmer never has said that.

Mr. HUNT. In addition to that the Attorney General said that he would submit to the chairman of the committee a written report on the subject, and he did submit to Chairman Haugen a letter written by his assistant, Mr. Guy D. Goff.

Mr. KINCHELOE. Do you mean a letter signed by the Attorney General?

Mr. HUNT. Signed by his assistant, acting for him.

Mr. KINCHELOE. I am talking about Attorney General Daugherty, and not about some assistant he may have there. Now, if it is a legal obligation, and you evidently think it is from what you say in this brief, why do you come to the committees of Congress to get an appropriation? Why do you not go to the Court of Claims and fight it out there on its merits?

Mr. LAMBORN. Gentlemen, on page 19 of our brief we quote from the letter of Mr. Guy D. Goff, addressed to your committee chairman, in which he states:

"The Attorney General expressed the view before the committee that there was an undeniable moral obligation, and, in his opinion, a legal obligation, upon the Government."

Mr. KINCHELOE. Yes; he did state that at first, and then he stated, after we examined him further—and I remember the gentleman from Indiana, Mr. Purnell, examining him upon that point—and he said that that was the first time that it had ever been stated before this committee that there was a legal obligation, and Mr. Purnell reminded him of the fact that Mr. Palmer had not said so, and then, if you will read his testimony, you will see that he still says it is a moral obligation, but he did not want to pass on the question of whether it was a legal obligation or not.

Mr. LAMBORN. I am not here to try to quarrel with you, sir, but this letter which Mr. Daugherty said he would send to the committee he perhaps did not write himself, but undoubtedly, in my opinion, he must have seen it and allowed Mr. Goff, the assistant to the Attorney General, to send it.

Mr. KINCHELOE. I have read you on page 78 what he said in answer to my question.

Mr. LAMBORN. But he had said he would send a letter to the chairman of the committee giving his views relative to the legal obligation, and this letter apparently is the reply, signed by his assistant.

Mr. TEN EYCK. I would like to ask you a question, Mr. Chairman. Did the Attorney General send a letter to you relating to this case as regards the legal obligation?

Mr. LAMBORN. No; this claim has never been before him.

The CHAIRMAN. Mr. Goff wrote a letter to a member of the committee.

Mr. HUNT. And I have a photostatic copy here of that letter.

Mr. TEN EYCK. I merely wanted to obtain that information in reference to this case because, as I understand it, when we considered the first claim it was understood that we were considering each claim separately. Was not that the understanding of the committee?

Mr. JONES. That was the understanding.

Mr. TINCHER. But that would not bar these people from citing a letter used in connection with another claim.

Mr. TEN EYCK. No; but what I think is that these gentlemen ought to get a letter from the Attorney General in relation to this specific claim, because the committee, when it first sat on sugar matters, decided that they would hear each claim separately and upon its own merits.

Mr. LAMBORN. Very well. We have no—as you might use the term—lobby here.

Mr. TEN EYCK. I am simply doing this to clear up any misunderstanding.

Mr. LAMBORN. We have not the semblance of what might appear to be a lobby in Washington or elsewhere. I have never had the pleasure, so far as I know, of meeting a single member of this committee. I have not had the time to do it. We are putting our case here on its merits. If you wish us to go to the Attorney General and bring him down here, all right; but it seems to me that if we make a claim against the United States Government to you gentlemen, who are part of the Government with us, should use your own means of finding out and supporting the truth of our statements here.

Mr. TEN EYCK. I do not think you would have to see any member of this committee to explain anything to them personally outside of this room. I believe they all feel the same way that I do. Whatever your testimony is, we are going to decide the matter upon the information you put in here, honestly and truthfully, and endeavor to give everybody a square deal.

Mr. LAMBORN. I believe that, but what I mean to say is that we have not gone to the point of seeing these people. We have only asked Mr. Riley to come here, with whom we were in direct contact. Now, I put it to you; if you were in the sugar business, would you go to Mr. Palmer, or would you go to his assistant, who was notified that he was in entire charge of the sugar trade of the United States? We did not recognize Mr. Palmer.

Mr. TINCHER. Nobody went to Palmer.

Mr. LAMBORN. We went to the man he had appointed. I do not know Mr. Palmer, except for meeting him that one day when he addressed us in regard to bringing in sugar, and I have tried to give you a correct view of the atmosphere of that room at that particular time. When it comes to what we did with Mr. Riley, we can state that later. He was the accredited agent, just as I say that when Mr. Daugherty said he would furnish the chairman of this committee with his opinion as to the legality of this transaction, not only this one which was not mentioned at that time but any other, I say that he would delegate that authority to his assistant, just the same as I, as the head of my firm, could not possibly find the time to have every one of the people buying sugar from us or selling sugar to us come to me personally. You asked me who, for instance, wrote this brief. It was not our general counsel. Our general counsel is entirely different from our business. They do not even know we have this resolution before Congress. They are very important lawyers, but we employed our own man, in our legal department, Mr. Hunt, who is a lawyer and who has done this work himself, to get up this statement of facts and to make it as limited as possible.

Mr. TEN EYCK. Let me explain this to you. As I understand it, you three men, Howell, DeRonde and yourself, are not making a joint claim in relation to a joint hearing before the Attorney General.

Mr. LAMBORN. Not at all.

Mr. TEN EYCK. Each one of you had a separate understanding, and therefore it is essential to my mind that each one of you should prove your case from the separate understanding you had with the Attorney General.

Mr. LAMBORN. Or his delegated authority.

Mr. TEN EYCK. And therefore his recommendation as regards one case does not necessarily apply to your case, because you had a separate understanding in relation to it.

Mr. TINCHER. I suppose if he could prove his understanding, however, the committee would have intelligence enough to know whether a legal opinion on another understanding would have any bearing on it, and I supposed that was the object of including the legal opinion in the brief.

Mr. LAMBORN. Yes; that was all. If you want us to go to the expense of bringing a high-priced lawyer like Mr. Van Doren, our general counsel, here to give a legal opinion, and sit here by us we will have him come down here and direct us on this thing, but as far as I know, no member of the firm of Lamborn & Co. has gone to the general counsel regarding this matter. We have felt, as merchants, that if we were entitled to justice we would secure it here. We are not here trying to make a case at the expense of somebody else. Either we are entitled to this money which we lost because we were

directed practically, or if not directed, it was certainly strongly suggested to us to bring these sugars in.

Mr. RIDDICK. I would like to ask you two or three questions for my own information. You say it was strongly suggested to you that you bring these sugars in?

Mr. LAMBORN. It was more than strongly suggested.

Mr. RIDDICK. At this meeting?

Mr. LAMBORN. At this meeting in Washington on May 21, 1920.

Mr. RIDDICK. Then you brought in the sugar and you faced a loss and then you say that you stopped bringing the sugar in. Is it not true that if you had known and had had full assurance that the Government was going to stop importing sugar, but you stopped because you figured it was to be your loss?

Mr. LAMBORN. Let me answer you in this way: If we had been left to our own initiative, we would not have brought the sugar in. Of course, I can not state how the human mind might work, but so far as I believe, we would not have brought any sugar in, and we did not, as far as I know, bring in a single pound of sugar or purchase a single pound of sugar during that year, for our own account, beyond this sugar. Therefore, I say we were under great pressure by the Government to bring this particular sugar in.

Mr. KINCHELOE. I do not think that is responsive.

Mr. RIDDICK. I think there is no manner of doubt but you were under pressure by the Government to bring in this sugar, just as the wheat raisers of the country were under pressure to raise wheat, and yet no wheat raiser has had the audacity to come in here and say, "The Government insisted that we raise wheat and we suffered a loss and therefore the Government must pay us." I would like to have you explain the difference in those cases.

Mr. LAMBORN. I do not know that we are audacious in coming in here and persenting our claim, but I will say that if we had not been importuned by the Department of Justice, we would not have brought in this sugar or any other sugar, nor did we purchase any other sugar after this sugar.

Mr. RIDDICK. But all patriotic people were carrying on, and many of them sustained losses in their carrying on in behalf of the Government in the management of the war and all that sort of thing.

Mr. LAMBORN. Regarding the word "patriotism" I presume it is used here frequently, but I do recall making this statement to the Attorney General. When he appealed to our patriotism, I said, "I wish you would appeal to us on our sense of duty as merchants toward these people rather than patriotism."

Mr. RIDDICK. But the thing that is not clear in my mind is whether you were induced to bring this sugar in on account of representations by the Government that they would take care of the losses, or were you just urged to bring it in as merchants?

Mr. LAMBORN. I have stated twice that we were not guaranteed against loss. We were urged to bring in the sugar to aid the people of the United States in preserving their fruit and in supplying them with sugar.

Mr. RIDDICK. Was there any thought at this time on your part or on the part of the other people that the Government would take care of your losses—was there any implied contract?

Mr. LAMBORN. No; I have answered that question twice.

Mr. KINCHELOE. Then why does your attorney maintain that it is a legal obligation?

Mr. LAMBORN. I have not said that our attorney maintains that. Mr. Hunt is not our general counsel. He is an employee of Lamborn & Co.

Mr. KINCHELOE. He is the one who prepared this brief. If there is not any agreement, either express or implied, with any agent of the Government to reimburse you for any loss you may have sustained, how can get you a legal obligation out of it?

Mr. LAMBORN. I am not a lawyer, and I presume you may be, but again I refer you to the statements made by the Attorney General, Mr. Palmer, and also by the Attorney General, Mr. Daugherty, and by Mr. Goff.

Mr. KINCHELOE. I am very familiar with those statements. If it is a legal obligation, why not go to the Court of Claims and adjudicate your matter there instead of coming to Congress?

Mr. HUNT. Let me state right there that Mr. Lamborn has only started giving you the gist of the conversations he had with the Department of Justice. He just told you about the first conversation, and he is going ahead——

Mr. KINCHELOE (interposing). Oh, no; I asked him if, at any time, the Attorney General or anybody representing the Government even by innuendo promised to pay any loss that might be sustained, and he said no, and I think he is right.

Mr. ASWELL. May I interrupt just a moment? The former Attorney General and the present Attorney General both convinced me personally that in these other cases there was a moral obligation.

Mr. KINCHELOE. They both said that——

Mr. ASWELL (interposing). On the part of the Government, but in no case did either the former or the present Attorney General assert, and stand by it, that there was any legal obligation; therefore, I think that this brief should be corrected.

Mr. HUNT. I presume you have before the committee the letter written by Guy . . Goff, the Assistant Attorney General?

Mr. KINCHELOE. I have it right here before me.

Mr. TINCHER. It is printed in the hearings and has been read here and we are all familiar with it.

Mr. ASWELL. And the former Attorney General made it plain that there was a moral obligation on the part of the Government but not a legal obligation.

Mr. JONES. We are not bound by what is in the brief, anyway.

Mr. LAMBORN. I think he did.

Mr. ASWELL. Well, read it to us.

Mr. KINCHELOE. The letter says that in view of the peculiar obligations it seems to the department that legislation should be passed whether it is a legal liability or not, and it does not say anything even in that letter about its being a legal obligation. They both said there was a moral obligation and they still say that.

of Mr. ASWELL. If you are going to print this pamphlet for the benefit of the Members the House, that ought to be corrected.

Mr. LAMBORN. I am quite sure that Attorney General Palmer stated that in his opinion there was a legal obligation.

Mr. ASWELL. Well, find it.

Mr. KINCHELOE. I would like you to find that, if it is in there.

Mr. HUNT. I might state to the committee that we have quoted from both Attorneys General and their words speak for themselves, whatever the statements are.

Mr. ASWELL. But you say it is a legal obligation.

Mr. HUNT. That is my personal opinion based on these statements.

Mr. ASWELL. But they did not say that.

Mr. HUNT. Their own quotations speak for themselves.

Mr. JONES. I do not think any member of the committee has seriously felt that any one of these claims was a legal obligation, and I do not think any one of the claims heretofore has seriously been considered as a legal obligation, and I do not think the issue will turn on that at all, because I do not believe there are a half dozen Members of Congress who would consider any one of these claims as a legal obligation. The whole question is whether they are moral obligations, and therefore I do not think this is a material matter at all.

Mr. RIDDICK. If they were legal obligations, this would not be the place to adjudicate them.

Mr. PURNELL. No.

Mr. JONES. And therefore it is an academic question.

Mr. KINCHELOE. And if their counsel thought it was a legal obligation, it would be before the Court of Claims instead of before this committee.

Mr. JONES. Of course.

Mr. TINCHER. But a man ought not to be debarred from his rights even if counsel should not know what they are.

Mr. LAMBORN. I do not know the difference between lawful and legal, but here is a quotation from former Attorney General Palmer in his hearing before this committee:

"I say it was a lawful plan; therefore a proper plan."

If any of you are lawyers, you can tell me about that.

Mr. ASWELL. He was discussing the procedure of the Department of Justice, and was not discussing these claims.

Mr. TINCHER. We were questioning their right to go into it, inasmuch as we had a Sugar Equalization Board.

Mr. PURNELL. That did not involve the legality of the claim before the committee. I grant you that if you take Mr. Daugherty's statement, not in connection with subsequent cross-examination which I conducted in part and which some of the other gentlemen conducted, I can very readily convince you that he did say that one or two of these claims were legal obligations, but I think you would find that he backed up on that just a little bit.

Mr. HUNT. Is it not a fact that he told the chairman of the committee that he would go over all the facts on the Howell and American Trading Co. claim and then would submit his opinion as to whether it was a legal obligation, and is not the letter of January 17 to the chairman from the Assistant Attorney General for the purpose of fulfilling that promise?

Mr. KINCHELOE. It was dated January 5.

Mr. HUNT. No; January 17. Here is a photostatic copy of the letter.

Mr. LAMBORN. Gentlemen, to simplify the matter, let me say that I have not a legal mind. I am a plain business man, and until 1920, when these repudiations came about, we did not have to employ general counsel, who sometimes had to work as long as eight days with 8-hour shifts of eight stenographers in order to work us out of some of these difficulties. If you feel that the question of legality should not be discussed by me, I am not going to put myself on the same basis as a man with a legally framed mind, and I will eliminate that, and if the people of the United States should pay this claim on moral grounds, let them pay it.

Mr. PURNELL. That ought to be the basis of your request.

Mr. TINCHER. You understand that if they were legal obligations you would not present them here.

Mr. JONES. They would go to the Court of Claims.

Mr. LAMBORN. Yes.

Mr. VOIGT. Mr. Lamborn, may I ask you a question or two? Did you get all of your sugar out of the Argentine?

Mr. LAMBORN. Yes, sir. We only bought 2,000 tons or thereabouts. It was bought probably as a little less than 2,100 tons. I notice the weight was a little less than 2,100 tons. We bought 2,000 tons, but the contract may have provided for 5 per cent more or less, as is customary in making sugar contracts.

Mr. VOIGT. Your sugar all came promptly to the United States without any hindrance?

Mr. LAMBORN. Without any hindrance whatever. We bought it through our own office, Lamborn & Co., in Buenos Aires.

Mr. PURNELL. The embargo had already been lifted?

Mr. LAMBORN. As far as we know, although it appears from the testimony produced here that the embargo was not lifted until long afterwards, but our sugar did go out and was shipped from Rosario on the 15th of June, and on the 25th of June the same steamer loaded the balance at Buenos Aires; but it appears from the record here and the testimony of other people that they had difficulty long after our sugar was being loaded and shipped in getting their licenses.

Mr. KINCHELOE. How much was it contemplated you were going to deliver in this country?

Mr. LAMBORN. Two thousand tons.

Mr. KINCHELOE. How much did you deliver?

Mr. LAMBORN. Two thousand tons.

Mr. KINCHELOE. You delivered the whole amount?

Mr. LAMBORN. Yes, sir.

Mr. KINCHELOE. And none of it that you contracted to deliver, after the price went down, was sold in the Argentine?

Mr. LAMBORN. No, sir; none at all, nor did we attempt to sell it in the Argentine.

Mr. TINCHER. The statement has been made here that the Government could very well afford to pay these claims because of the fact that the people really profited by the fact that the importation of this sugar or the talk of importing it, really broke the sugar market in this country. I suppose it would be your contention that your company, having the sugar here and having it on the market or trying to peddle it on the market, if anyone with Argentine sugar had anything to do with breaking the market, you were certainly instrumental in doing that?

Mr. LAMBORN. I am not going to make any mental speculation on that. I can only say this, the market did break and the psychology of the situation was that much more sugar was in the hands of the housewife, in the hands of the manufacturer, and in the hands of the jobbers, than anyone dreamed of. Every refinery, day by day, was absolutely bare of sugar as night came. There was a demand for ten times the amount of sugar available during that period. What happened was that the exploitation of the sugar shortage made everybody, your wives, my wife, everyone who used sugar, either in their home life or for canning purposes, say, "We have got to buy our sugar now." The result was that everybody tried to buy sugar at one particular time and instead of there being an orderly market, which probably would not have sustained an advance of more than 1 cent based on the economic situation in sugar throughout the world at that particular time, the fact that there were 1,000 buyers where there ordinarily would be 100, or 20 buyers where ordinarily there would be 2, made the market go up so fast; in other words, the retail grocer would get orders from everyone in his community and he would give the orders to his wholesale grocer, and he would say, "This is unusual; instead of having orders for 100 barrels of sugar, I have orders for 500," and the result was that instead of ordering 100 he would order

500, and the result was that he went into many channels of trade that were new to him.

The wholesaler who would ordinarily order his sugar from my firm, would go to my competitor or would go to anybody's competitors and try to buy sugar, and people in Savannah were buying sugar from New Orleans and people in Chicago were buying sugar from parts in the country that they never theretofore had bought sugar, and they were buying any kind of sugar. Even raw sugars were actually sold to some extent for domestic consumption, and even washed turbinado sugar, that never had any market in this country before, was accepted at high prices.

Mr. McLAUGHLIN of Michigan. Mr Chairman, I think all of us have a pretty good idea of what the situation in the sugar market was, and it seems to me the only thing that is relevant here is the relation of these gentlemen with the Government. If the situation were not half as bad as stated or if it were ten times as bad, the one point remains, what was their relation with the Govrenment; did they have a contract, express or implied; was there a legal or a moral obligation; and on what testimony do we found that situation?

Mr. LAMBORN. But when the gentlemen ask me questions, I must go ahead and answer them.

Mr. McLAUGHLIN of Michigan. We are filling the record with a lot of testimony which is very interesting, and I do not blame the witness for giving it, but I think every one will agree that it is not a all material. We know there was a shortage of sugar and a very acute situation.

Mr. LAMBORN. If the chairman will instruct me to only answer question in regard to my relations with the Department of Justice, I will confine myself absolutely to that.

Mr. TINCHER. While the gentleman from Michigan was out of the room, there was a statement which went into the record which I think might be confusing, concerning the fact that you were permitted to take sugar out of the Argentine. It might look as if some other parties were not permitted to do that. Do you know whether, as a matter of fact, the embargo on taking sugar out of the Argentine was a conditional embargo, under which any one could remove sugar from the Argentine by purchasing certain classes of sugar and leaving a certain percentage, and you do not know but what your company did that, do you?

Mr. LAMBORN. I know that Lamborn & Co. in Buenos Aires did not, but probably the people they bought from, namely, Moss & Co., the people who represented the great refiners of the Argentine, and Portellis, one of the great refiners down there, sold the sugar to us for prompt shipment. Whether they reserved 30 per cent of pilet sugar for home consumption or not, I do not know. I presume they did, because the edict of the President, Irigoyen, signed by all the members of the cabinet, indicated they must reserve 30 per cent.

Mr. TINCHER. And that is probably the explanation for your being able to get the sugar out of the Argentine?

Mr. LAMBORN. I presume it is, but I do not know. Nothing special was done by us, I know.

Mr. ASWELL. And also there was the further fact that you maintain offices there?

Mr. LAMBORN. Yes, sir; we had our own office.

Mr. ASWELL. And shipped it from your own offices?

Mr. PURNELL. I just want to ask you one question, which, I think is directly to the point: you have been in business for a number of years——

Mr. LAMBORN (interposing). Thirty years in New York alone.

Mr. PURNELL. And I want to know if you regard it as the act of a good business man to enter into an arrangement of this kind, involving the amount of money which it does involve——

Mr. LAMBORN (interposing). I think——

Mr. PURNELL (interposing). Just a minute, please. Without having some definite, businesslike understanding as to what would happen in case of a loss?

Mr. LAMBORN. I think I have made quite clear my attitude before the Attorney General and his assistants in Washington. We did not think it was good business, but you must recall, as I said before, that anyone in the sugar business, whether he was a refiner, a merchant, a broker, an importer, a wholesaler, or a retailer, was continually plagued, either mentally plagued or plagued by the department or by newspaper reports. We were ashamed to even meet our friends because they would feel that everyone was profiteering on sugar. Naturally, the pressure was very great. Ordinarily I would say, "Certainly not," and if you asked me the question as an individual or as a Member of Congress, I would say that I certainly would not do it, but here the Department of Justice had absolute charge of the sugar industry of the United States, and they were using very great pressure in every line, not only against

people profiteering or possibly profiteering, but also to bring in sugar here at a time when we, as merchants, did not believe the market justified it.

Mr. PURNELL. Then, in other words, if the interests of the Government and the people had not been involved, you would not have undertaken this thing——

Mr. LAMBORN. We certainly would not.

Mr. PURNELL (continuing). As a business proposition, on your own initiative?

Mr. LAMBORN. We certainly would not, and that is the only reason I say there is a moral obligation. The question of legality, I told you, I will dismiss, because I do not presume to be a lawyer.

Mr. PURNELL. That ought to be the basis of the moral obligation, if there is one.

Mr. RIDDICK. I am not able to understand why, as a business man, knowing the business and recognizing that there probably would be a loss, you would go ahead and sustain this loss without having some arrangement for it to be absorbed.

Mr. LAMBORN. You are assuming I thought there would probably be a loss. Had we been left to our own initiative, we would certainly have entertained that view. At that time we did feel that the market was high enough and too high; nevertheless, as I told you, right in the Department of Justice, I made a bid from our Philadelphia office, which was sent by telephone, for 50,000 bags, or 7,000 tons, to the importers sitting there, at the highest price that raw had sold in 70 years, and they all declined it. Now, regardless of what my opinion was, we had the actual attitude of the Department of Justice, with the head of the Department of Justice there, and we had the importers there at the same time, who were importing and producing raw sugar, refusing the highest price that had been known here in 70 years. Therefore, I say that ordinarily I would not have considered, as a business man, such a thing; but under the circumstances, yes.

Mr. RIDDICK. In other words, you made a bad bargain in reference to this sugar, expecting there would probably be a loss, and yet you made no arrangements to take up that loss?

Mr. LAMBORN. I beg your pardon. I do not know how I am going to make it clearer. We did not anticipate a loss. We believed before we went to that meeting and we believed subsequently that the market was too high, and as I have said, left to our own initiative, we would not have purchased that sugar, but when they not only spoke of their own statistical department but urged and implored us, practically, to bring in this sugar, naturally our mental attitude changed.

Mr. KINCHELOE. Let me ask you this question: You speak of a moral obligation. As you know, during the war the price of wheat for the farmer was fixed by the Government at about $2.20, and he had absolutely nothing to say about it. He was urged and implored to raise the wheat at that price when, of course, if it had not been fixed there is no telling how high the price would have gone.

Mr. LAMBORN. Your argument may be on straight lines, but it is not on parallel lines.

Mr. KINCHELOE. Wait a moment; you do not know what my conclusion is. They went to thousands of farmers and caused them to raise millions of bushels of wheat in this country. They could have gotten $3.50 or $4 a bushel, but by reason of a law passed by Congress they were limited to $2.20 or practically that on the Chicago market, so, of course, there was a loss of the difference between $3.50, say, and $2.20. Do you not think, as a matter of justice and as a moral obligation on the part of the Government, they would be just as much entitled to that difference that they lost by reason of an act of Congress, not by the persuasion of any official of the Government, as was true in your case and these other claims pending here?

Mr. LAMBORN. Assuming your hypothesis is correct, I would say they had just the same right to a claim, but I do not agree with you because I do not think anybody in this room or anyone but God Almighty knows how the market would have been with an open market. Here the market to-day on sugar is open.

Mr. TINCHER. We know how the market was. We know the market was over $3 for wheat and over night, by an act of Congress, they reduced the price over 70 cents a bushel.

Mr. LAMBORN. But the price might have gone to $10 a bushel or $1. We know that raw sugar on the 21st day of May, 1920, was 23½ cents bid, and we know that on December 23 of that same year the price was 3¾ cents.

Mr. KINCHELOE. I would like to finish my question. You say that moral obligation would be just as just as yours, if my hypothesis is correct. Now, wherein is my hypothesis wrong?

Mr. LAMBORN. I do not know. I can not answer a very carefully drawn question like that without giving it study, and I am not here to discuss anything except our own claims, unless you desire me to give an opinion that is worthless to you and does not mean anything to me.

Mr. KINCHELOE. I was just figuring here that that is only one instance where thousands of people lost money during the war.

Mr. ASWELL. Your question is answered by referring to the record of what the price of wheat was after the fixed price expired.

Mr. KINCHELOE. Oh, no; wheat was bringing over $3 a bushel at the time the law was passed.

Mr. ASWELL. After the law expired, what happened to it? It went below the fixed price.

Mr. KINCHELOE. Certainly; but in the meantime the people who had this wheat to sell lost that differential, and I think that constitutes as just a claim as these sugar claims.

Mr. LAMBORN. May I answer your question? You asked me a question that requires some intelligent thought. I can not answer the question without thinking it over, and let me answer you by saying that while you may mean your hypothesis to be correct, yet it is wrong. You do not know, because no one except God could know, whether the farmer lost money. Did he lose money at $2.20 or would he have made more if the price had gone to $4? For instance, take the situation in Louisiana. In October, 1919, the Attorney General permitted Louisiana raw sugars to be sold at 17 cents a pound and Louisiana clarifieds at 18 cents a pound, at a time when Cuban sugars were selling at $7\frac{1}{16}$ cents a pound, and he did it because the Louisiana planters said they would be ruined if he did not do it. Last year they sold these same sugars from $3\frac{1}{2}$ or less than that a pound, and they were not ruined. Now, would they have been ruined the year before? They simply made a great deal more money in October, 1919, and in 1920 than they made last year. They may have been badly bent, but they were not ruined because they are still there and they are going to make their crop there.

Mr. KINCHELOE. Do you think that is an intelligent answer to my question?

Mr. LAMBORN. I think it is the best answer I can give you offhand. You may have studied this question in connection with wheat. But I have not studied it, and I do not think I should go into things I know nothing about. I can give you an intelligent answer in reference to sugar.

Mr. KINCHELOE. Yet you seem to know something about it because you say my hypothesis is wrong.

Mr. LAMBORN. I did not mean to say that.

Mr. KINCHELOE. I am telling you that when this Congress passed the law fixing the price of a bushel of wheat at $2.20, the farmer was getting over $3 a bushel for his wheat.

Mr. LAMBORN. Did he lose money at $2.20? I do not know.

Mr. TINCHER. Take the fellow who, before the price was fixed at $2.20, had 100,000 bushels of wheat that were worth $3 a bushel.

Mr. LAMBORN. He lost.

Mr. KINCHELOE. He has not got any bills here asking somebody to pay him.

Mr. LAMBORN. I do not want to be drawn into a discussion of something I do not know anything about.

Mr. TINCHER. I simply want to get that matter straightened out in the record.

Mr. TEN EYCK. Do you consider your understanding with the Attorney General and the Government was the same understanding as that with Howell & Co. and the De Ronde Co.?

Mr. LAMBORN. I do not know what their understanding was, except what I have seen here in the hearings. I am not going to bring the matter into a question of mental speculation or moral obligation. I know how I have conducted my business, and I am trying to state what happened if you will allow me.

Before this meeting was held, Mr. Palmer, the Attorney General, asked us if we would not appoint a committee of the importers and arrange to bring in the sugar. I said we do not want it. We are competitors. I said that while it was true we would still compete with each other, we were running our own business. I said, "You should appoint a committee." He said, "I do not know you gentlemen; I do not know who is best able to work with the department." After some discussion I suggested Mr. Rionda, of the Czarnikow Rionda Co., who was present, that company being the largest importers and producers of sugar in the world. Then somebody else suggested the representative of the Minford Lueder & Co., another firm of large importers, and then the representative of Lamborn & Co. was suggested. That committee was named to work with the Department of Justice in order to find out what supplies of sugar there were available in the world.

In the following week, I think it was on the 25th of May, Mr. Armin W. Riley, who is here this morning, and who was Mr. Palmer's assistant, absolutely in charge—Mr.

Figg was no longer in charge; we were told Mr. Riley would be appointed—Mr. Riley arranged to have a meeting in his office in New York of the committee of importers, and there was a discussion of the question of the importation of the sugar from the Argentine, and he asked us if we could bring in some of that sugar.

We had a further meeting, early in June, at the office of the Department of Justice in the post office building in New York. This time some of the members of these firms—I can not remember just who the representatives were—met Mr. Riley, and he had his statistician there. Mr. Riley urged us to bring in the sugar from the Argentine. That was on the 7th of June. I walked down the street with my partner, Mr. Tameling, and I said, "We have already gone at this, and I do not like the looks of the market." Mr. Riley had a department statistician with him in the second meeting and this statistician presented figures that we did not agree with. He said those were the Government figures he had, but we did not agree with them.

Mr. McLAUGHLIN of Michigan. Have you put into the record to-day the dates and amounts of your importations of sugar, that is the dates and amounts of the shipments into the United States?

Mr. LAMBORN. I think that is all here.

Mr. HUNT. The complete correspondence covering the contracts, and photostatic copies of the ocean bills of lading, the shipping invoices, and all other data of that kind are here.

The CHAIRMAN. When was it shipped?

Mr. LAMBORN. It is all in the record. One thousand tons were shipped from Rosario, Argentina, on June 5, and the second thousand tons were shipped by the same steamer from Buenos Aires on June 25, and arrived in New York on July 21, 1920.

Mr. McLAUGHLIN of Michigan. I asked if you could give the dates of your purchases in the Argentine, and the amounts purchased each time, together with the dates of shipment and arrival in the United States.

Mr. LAMBORN. It is all in the record.

Mr. McLAUGHLIN of Michigan. Has it been put in the record this morning?

Mr. LAMBORN. I am now putting it in.

Mr. KINCHELOE. I understood it was going in the record.

Mr. LAMBORN. The second 2,000 tons were shipped on the same steamer.

The CHAIRMAN. On June 15?

Mr. LAMBORN. It was shipped from Buenos Aires on June 25.

Mr. McLAUGHLIN of Michigan. When did you buy it, and in what quantities?

Mr. HUNT. We bought the first 1,000 tons on May 25, and it was finally placed on board the vessel on June 15, at Rosario. In the case of the second 1,000 the contract was finally closed on June 15, and that sugar was completely placed on board on June 25, at Buenos Aires. The vessel sailed from there and arrived in New York on July 21. Those were two shipments on one vessel. All of the documents showing the quantities are in the brief, which has been made a part of the record.

Mr. KINCHELOE. What do you claim you lost approximately?

Mr. HUNT. The amount is approximately $570,000. Because we got the sugar in promptly and because we shipped it out promptly our loss is not nearly so great as the loss of other claimants.

Mr. KINCHELOE. What did you do with it?

Mr. LAMBORN. We shipped it to our agents and had them sell it right away; that is, what we had not contracted for sale. When we made the original contract on the first 1,000 tons, we wanted to get a contract to resell all of it if we could. We resold by contract for future delivery a part of the first 1,000 tons. The statistics on that sale you will find in full in our brief.

We could not sell the second 1,000 tons because it was contracted for so late. A part of the first and all of the second 1,000 tons had to be sent out and sold at the best possible price.

Mr. TEN EYCK. Did you have any trouble in transporting the sugar from Argentina to the United States? Did anyone stop you?

Mr. LAMBORN. No; we made this importation under the general export permit which was issued by the Argentine Government on May 22, 1920. We made it on the same permit as Mr. De Ronde. The American Trading Co. made their importation on a special permit under the terms of which they would not have to put in the 30 per cent pilet type sugar.

The CHAIRMAN. Their statement is that the permit was not issued until the 23d of June. That the application was made on the 11th. You said you had a permit and had no trouble in making the importation.

Mr. LAMBORN. I think you might read the hearings which have taken place before this committee and the committee of the Senate, and you will find that this is the fact—or it seems to me this is the fact: The American Trading Co. and Howell arranged

for their importations under what was known as a special export permit. They did not come in under the general export permit for 100,000 tons. They were getting a special permit which would permit them to export sugar without putting up a deposit of 30 per cent of the pilet sugar. On the other hand the release of the embargo by general permit came on the 22d of May. That has been put in the record. Ourselves and Mr. De Ronde according to his statement, imported under that permit.

Mr. ASWELL. It was a general permit, was it?

Mr. LAMBORN. They were entitled to the same permit; there was no question about that.

Mr. MCLAUGHLIN of Michigan. To comply with the conditions for a permit anyone had to deposit this proportion of sugar?

Mr. LAMBORN. Thirty per cent of pelet.

Mr. MCLAUGHLIN of Michigan. The American Trading Co., you say, got a permit for bringing out that sugar without complying with that condition?

Mr. LAMBORN. Yes, sir; because after we had felt we had complied with that special permit they could not get their sugar out of the Argentine until about the middle of August, because their permit did not come through.

The CHAIRMAN. It was the 23d of June, was it not?

Mr. LAMBORN. No, I think not.

Mr. HUNT. They did not ship it on the 23d of June.

The CHAIRMAN. There seem to be some conflicting statements, and I would like to have the matter cleared up so we will know what the delay was.

Mr. LAMBORN. We can not tell you why it was that they did not have to deposit the 30 per cent of pelet.

The CHAIRMAN. That required a special permit?

Mr. LAMBORN. Yes.

The CHAIRMAN. If they had put up the 30 per cent——

Mr. LAMBORN (interposing). They could have had their sugar at first. How we came to bring our sugar out so quickly I do not know, unless the people from whom we bought it had other sugar which they could put aside so that our sugar was ready for shipment early.

Mr. ASWELL. This gentleman said you lost something over $500,000. What evidence have you to present proving your claim accurately?

Mr. LAMBORN. We have the sworn statement of our comptroller, and you can send anybody from this committee to examine our books and records.

The CHAIRMAN. He has also listed the purchasers.

Mr. LAMBORN. That is only part of it. Those are the purchasers who bought by contract.

Mr. ASWELL. The statement of losses will prove it?

Mr. TINCHER. Speaking of the Franklin special permit, I suppose the question of whether you needed a special permit to export sugar from the Argentine depended upon whom you purchased the sugar from. You speak of your people purchasing the sugar and having to deposit 30 per cent with the Argentine. The American Trading Co. had a company of their own that they purchased of, had they not?

Mr. LAMBORN. We did not purchase this sugar from our own company. We gave the order to our own company and they bought it for our account in New York. How the American Trading Co. operated I do not know. They have their own purchasing agents the same as we do. Whether their methods were less capable than ours I do not know.

Mr. TINCHER. Was their delay in exporting their sugar due to the fact that they wanted to purchase the sugar of their own company in the Argentine?

Mr. LAMBORN. I would doubt if they would purchase it of their own company. I think they probably sent their order to their own company, and that company went into the market, because they are not producers and refiners of sugar.

Mr. HUNT. It was our understanding from the advances made by the Department of Justice that the whole proposition was to get the sugar in as rapidly as possible. There was a shortage in sugar and the Department of Justice wanted to relieve the shortage. So we made our plans to purchase and make the shipments at once as we understood that time was the essence of the contract. We were one of the first importers to bring it in.

Mr. TEN EYCK. Is that the reason why both of you acted differently——

Mr. LAMBORN (interposing). We do not know that we did.

Mr. TEN EYCK. You just stated——

Mr. LAMBORN (interposing). As I have just stated, they may have done so.

Mr. TEN EYCK. Is it not your view that each of you had two different agreements with the Government?

Mr. LAMBORN. We had no agreement with the Government in the Argentine. I do not know what agreement they had with the Government here.

Mr. TEN EYCK. You had a different agreement with the Government in regard to how the sugar should be brought out.

Mr. LAMBORN. Which Government are you referring to?

Mr. TEN EYCK. A different agreement with the United States Government as to how the sugar should be brought from the Argentine.

The CHAIRMAN. Mr. Figg's letter will explain it.

Mr. LAMBORN. I do not think we ought to speculate as to what the American Trading Co. did.

The CHAIRMAN. It states: "After talking this over with your representative, Mr. Linn, and Mr. Giddings, it was deemed advisable that your agent already on the ground should be advised to contract for or buy as much of the entire surplus as possible before any further request was made that the embargo be lifted, as, of course, upon the general knowledge that this has been done will create a speculative market."

It was to prevent speculation on the market; so it does not seem to me it is the fault of the Government in not getting the embargo off.

Mr. TEN EYCK. It has been stated here by the witness that the reason why one company did not bring the sugar out until a later date and the other company brought it out earlier was due to the fact that each was operating under a different agreement with the United States Government.

Mr. LAMBORN. I did not say that.

Mr. TINCHER. No one stated that but the gentleman from New York.

Mr. TEN EYCK. The gentleman made the statement that one of the importers from the Argentine was not required to put up 30 per cent of the pilet sugar, and he brought out the fact that the other company was under another agreement. If that is the case, they were both working under different agreements.

Mr. KINCHELOE. That was a regulation of the Argentine Government or a requirement of their regulations.

Mr. TEN EYCK. It was a regulation between the United States Government and the Argentine Government as to how this sugar was to be brought out.

Mr. HUNT. When the American Trading Co.—and I get this only from reading the testimony—when the American Trading Co. started to make importations there was no general export permit. Therefore, if they made their shipments at all from the Argentine and imported sugar here they would have to do it under a special permit. While they were dickering for this special permit the general permit was issued on May 22.

Mr. TEN EYCK. On what date?

Mr. HUNT. On May 22.

Mr. TINCHER. That general permit required a deposit of 30 per cent of pilet sugar.

Mr. LAMBORN. Yes.

Mr. TINCHER. The American Trading Co. did not wish to comply with that condition?

Mr. LAMBORN. I presume that is so.

Mr. KINCHELOE. That was a regulation of the Argentine Government.

Mr. LAMBORN. Yes; you will find that in our brief. May I interject this remark at this point, because I think we are speaking of the moral obligation. While I am on that point I would like to call attention to the fact that some one would have taken these losses if the merchant who brought in the sugar had not done so. I have been the agent of the royal commission on the sugar supply of Great Britain and all of her allies, and was their personal representative during the period of the war, and handled all of the sugar shipped out from the United States and Cuba for Great Britain, France, and Italy, during all of that period. They acted as buyers of raw and refined sugar. They had their own people working, including the greatest sugar men in Great Britain, Mr. J. J. Runge, who is supposed to be a master mind on raw sugar, and Sir Robert Park Lyle, who was supposed to be the master mind in the sugar-refining industry of Great Britain. They were not merely local men, but supposed to be the greatest men in their business in that country, and still they purchased the Mauritius crop of approximately 200,000 tons in the early part of 1920 at about 16 cents a pound, and they lost in that year, in supplying the Government of the United Kingdom, over £25,000,000. That was in one year, 1920. If we were to make a claim on sugar that we brought in on our own initiative it would be enormously greater than the amount of our claim, and we would be criticized severely. And I think if the Department of Justice, without skilled merchants in sugar, had gone out to buy sugar after the rise took place—I am speaking of the time after the President was offered this proposition—the Government would have had untold millions of dollars of loss. Therefore,

I say, if there is no moral obligation—I want you to consider that—if there is no moral obligation I do not want a cent.

The CHAIRMAN. You spoke of buying from the refiners. Do you buy direct and sell direct?

Mr. LAMBORN. In the United States we act as brokers selling for the refiners to the trade throughout the United States.

The CHAIRMAN. On commission?

Mr. LAMBORN. On brokerage, not commission. We act as merchants when we buy sugar for export. This year we have bought a great many thousands of tons of refined granulated sugar. We buy that as merchants and sell it to merchants throughout the world.

The CHAIRMAN. How would you define brokerage?

Mr. LAMBORN. The broker, buying and selling for the refiner, and the wholesale grocers ——

The CHAIRMAN (interposing). That is on commission?

Mr. LAMBORN. That is on brokerage. There is a difference between brokerage and commission. With commission there is a risk; usually with brokerage there is no risk. When we sell refined sugar to the trade we keep them posted on the raw sugar and the refined sugar market. They send us orders for refined sugar and we buy sugar from the various refineries in different places and we buy that sugar in their names—that is, in the names of the jobbers—and the refinery ships the sugar to the jobber, and the refinery pays us brokerage. When we buy the sugar for export, buying in our own name, we buy from the various refineries in very large quantities, and we cable our information regarding our prices, and the orders come to us. We bill that sugar to the parties abroad.

The CHAIRMAN. The broker does not carry any responsibility?

Mr. LAMBORN. The broker does not carry any responsibility.

The CHAIRMAN. But the merchant does?

Mr. LAMBORN. Yes.

The CHAIRMAN. What about the commission?

Mr. LAMBORN. We make a differentiation between ourselves and commission merchants. We say that these other people are commission merchants in America, and that we are brokers. They are paid a commission for handling all of the raw sugar and they finance or pay for same and charge interest at certain rates. They get paid the ruling rate of interest for the money loaned and they get a commission of a certain percentage of the price of the sugar for the handling.

The CHAIRMAN. There is a possible loss in financing?

Mr. LAMBORN. In that case they do not take any financial risk, but they do have to supply the money.

The CHAIRMAN. Generally speaking.

Mr. LAMBORN. Generally speaking, in my definition, we have not got any financial risk. That is the way we handle business in the United States.

The CHAIRMAN. And the commission merchant has a financial risk.

Mr. LAMBORN. The commission merchant, as I understand it, does not have a financial risk, except that it supplies the money to the refiner or to the producer.

The CHAIRMAN. If he supplies the money it would require some liability.

Mr. LAMBORN. It would be a minimum liability.

Mr. SINCLAIR. There is no brokerage in this bill.

Mr. LAMBORN. No; we sold it through brokers.

Mr. KINCHELOE. When did you first discover that you were going to have a loss?

Mr. LAMBORN. I think the market commenced to break about the 1st of July. It was a question of whether we knew then or not. We did not know there was going to be a loss until we actually came to sell the sugar and we knew early in July that the trade would not buy standard granulated sugar—or during the latter part of June we knew it.

Mr. KINCHELOE. What was the first action you took to recoup your loss?

Mr. LAMBORN. We immediately sent sugar on consignment to our agents in various parts of the United States and told them to sell at the best price they could get.

Mr. KINCHELOE. After that did you consult your lawyers about the loss?

Mr. LAMBORN. No; we have never consulted our general counsel; we have only consulted ourselves and Mr. Hunt.

Mr. KINCHELOE. You never talked to your lawyers as to whether you had any action on which you could go before the Court of Claims.

Mr. LAMBORN. No, sir; we never consulted our lawyers about that.

Mr. KINCHELOE. What was your contention up to the time you knew these other people had bills introduced?

Mr. LAMBORN. Before we had any bill introduced I went to see Mr. Post, and I said to him, "We have a big loss; what attitude are you going to take?" He said, "I do not know, but we have filed our claim against the Government."

Mr. KINCHELOE. Who is Mr. Post?

Mr. LAMBORN. He is a partner of B. H. Howell Son & Co. You have indicated that there was antagonism; there is no antagonism. There has always been a very warm, friendly consideration on our part toward Mr. Post.

Mr. KINCHELOE. I did not mean to say there was any antagonism between you. As I understand, there is no special brotherly feeling between the Howell Co. and De Ronde.

Mr. LAMBORN. Of that I do not know.

Mr. KINCHELOE. If I understood you correctly, with a $500,000 loss you never consulted your own lawyers as to what steps you could take, as to whether they thought the Federal Government was responsible?

Mr. LAMBORN. No.

Mr. KINCHELOE. You never thought the Federal Government was responsible?

Mr. LAMBORN. Of course, we did. When this loss first began to be met, when we knew positively that we were going to have a loss of several hundred thousand dollars, I told Mr. Post of our loss on Argentine sugars, and I said the Government asked us to bring the sugars in, and I said I did not believe we were responsible for this particular loss, and he said that is how he felt about it.

Mr. KINCHELOE. How did you come to go to Mr. Post?

Mr. LAMBORN. You may think I am a fool because I did not go to our general counsel and ask his advice about this proposition, but I did not care to do that. Mr. Post said, "We are taking this matter up with the American Trading Co., and we are going to have a bill introduced in Congress." Mr. Post is a very good personal friend of mine, and he said, "If I were you I would do nothing until we see what action Congress is going to take." The only reason we did not take any action until the bill was passed through the Senate was this, when we found that counsel for the American Trading Co. and Howell were trying to get into the record, and in a measure did get into the record a statement that the Department of Justice said that no other people but the American Trading Co. and Howell were asked to do this thing, I said to Mr. Hunt, "I think it is time for us to see some of our Senators and Representatives and have a bill introduced." When they asked me, after returning from Washington, "Why did you not wait until we had this bill passed through the House, and establish a precedent for this claim; why did you not wait——"

Mr. KINCHELOE (interposing). Who said that?

Mr. LAMBORN. Mr. Post and Mr. Armstrong, counsel for Howell. I said, "When we went to Washington we found that your counsel tried to get into the record a statement that you were the only people who had a claim and I thought it was about time to consult my own interests."

Mr. KINCHELOE. What do you have general attorneys for anyway?

Mr. LAMBORN. We have them to give us advice.

Mr. KINCHELOE. I have a curiosity to know why you did not consult them.

Mr. LAMBORN. You will get the facts. They had cost us a great deal of money in legal fees in connection with the repudiation of contracts, when the market went down.

Mr. KINCHELOE. I would think you would have enough concern when you realized that there was a loss of over $500,000 in connection with your alleged agreement, to consult your counsel to see what you were going to be able to do, and I was wondering about that. I understand you to say you did not consult your counsel.

Mr. LAMBORN. Have you had occasion to consult counsel, or are you a lawyer?

Mr. KINCHELOE. I am a lawyer.

Mr. LAMBORN. Have you ever had fees of $10,000 and then another $10,000, and then many other $10,000's put at you because you have had claims against people you could not collect from? Since you have forced me to answer your question, I will tell you, because we are almost at the end of our rope, because of repudiations, because of the enormous amount of money we have paid out in counsel fees. Is that a clear answer?

Mr. TINCHER. I think it is. You mean the payment to——

Mr. LAMBORN (interposing). Our general counsel.

Mr. TINCHER. That was not in connection with this $500,000 claim?

Mr. LAMBORN. If I had brought my counsel into this thing, judging from the record here, and judging from what I saw here in another committee down here in the fall of 1917, you would not only have taken umbrage at my audacity at bringing my counsel down here on this claim, but we would have had a bill for that service of not

less than $20,000. I have tried to come before you, and I think I have come before you, with a clear conscience and a clean mind, and if I have given you the impression that I am a fool, I have nothing further to say.

Mr. KINCHELOE. I think you are working on a very vivid imagination.

Mr. LAMBORN. No.

Mr. KINCHELOE. If I was the head of a big business concern which had suffered a loss by reason of an alleged agreement with the Government, by which I was $500,000 out, if I had a general counsel for my business it seems to me the first thing I would do would be to go to him to get some advice.

Mr. LAMBORN. In the first place, I have 10 partners in this business, most of them I believe are intelligent, and they are a great gain to me. We have a very large organization, and we are accustomed to do very large business. I also have a man of very high character, who is a lawyer and who knows something about Washington affairs, in my business as a salaried man, to call upon, and who could be used at any time on that bill. He has been of great assistance to my general organization and he is not here to give any offense to you gentlemen.

Mr. KINCHELOE. Did you consult him about the proposition?

Mr. LAMBORN. Certainly, and he is not a man who will waste any time on a vital thing of this kind.

Mr. KINCHELOE. Are you a corporation?

Mr. LAMBORN. We are a partnership.

Mr. KINCHELOE. When did the majority of you finally conclude that you were going to try to collect your claim through an act of Congress?

Mr. LAMBORN. In the fall of 1920, when these losses first became apparent, and we went to people whom we knew had imported a good deal more than we had. Their interests were different. In addition to that, there was the American Trading Co., whom we did not know, and whom I do not know to-day, although I do know they are a very large concern——

Mr. KINCHELOE (interposing). Did you consult your lawyer here as to whether or not he thought you had a legal claim against the Government that could be collected through the Court of Claims in the regular way?

Mr. LAMBORN. I think, gentlemen, I am almost tautological, saying the same things——

Mr. TINCHER. Now, can you not answer that question yes or no?

Mr. LAMBORN. I can not answer yes or no, because Mr. Hunt——

Mr. KINCHELOE (interposing). I would like to have an answer to that question.

Mr. LAMBORN. We did not at that time, because he was not with us.

Mr. TINCHER. You have been in touch with Mr. Post since you filed the claim?

Mr. LAMBORN. I was before we filed it, but I have not been in touch with him very recently. He said to me, "If our bill be put through Congress, your claim will be as assured as ours."

After I came to Washington he spoke to me about the bill which we had had introduced. He said, "I do not see why you did it." I said, "Because your attorneys apparently were trying to make it appear that they were the only people that had a claim against the Government.

Mr. TINCHER. I want to ask you this question: It is a fact that Mr. Post, all the time that these bills have been pending, has known, by reason of his conversations with you, and by reason of his business friendship of many years with you, that you intended to come before Congress with your claim, if he was successful?

Mr. LAMBORN. That is not exactly the way it is. I tried to be exact in my answer. In the fall of 1920 when these losses were very apparent I went to Mr. Post as a good friend of mine and asked him what attitude they took relating to claims they had, if they had them against the Government. He said that the other people expected to have their bills introduced, and our claim being much similar would be a precedent for us if they won it. Then after that I learned that the bill had gone through the Senate, and he told me that the bill had passed the Senate at that session. Then he told me that it had passed the Senate in this session, and later it had been favorably reported by the House. In the meantime, when we acquiesced because we were friendly——

Mr. TINCHER (interposing). He knew you had had this loss?

Mr. LAMBORN. He did not know the amount, because at the time I first spoke to him we did not know ourselves.

Mr. TINCHER. When you went back up there you were criticized by Mr. Post?

Mr. LAMBORN. I would not say it was criticism. He said, "Why did you not wait until the House had passed our bill? It has been sent to the House by the committee." I told him because I felt that his counsel and the American Trading Co.'s counsel had

tried to make it appear, and also from the discussion in the press it seemed that they were trying to make it appear, that they were the only people who had any claim against the Government.

Mr. KINCHELOE. Do you know whether they felt that way about the De Ronde people?

Mr. LAMBORN. I do not know.

Mr. TINCHER. I wonder how many claims there were which were held in abeyance.

Mr. LAMBORN. I do not know.

Mr. TINCHER. I wonder if we could find out.

Mr. HUNT. I know there is one bill that has been introduced in the Senate on that question by a man named Watson.

Mr. TINCHER. For how much?

Mr. HUNT. I do not know how much that is.

Mr. Riley, who was the Assistant Attorney General at that time, is here, if you want to hear him. I asked him to come in case you wanted to hear him.

(Thereupon the committee adjourned).

(The brief above referred to is as follows:)

STATEMENTS OF FACTS SUBMITTED BY LAMBORN & CO., 132 FRONT ST., NEW YORK, N. Y.

ARGENTINE SUGAR IMPORTATIONS BY AGENTS OF DEPARTMENT OF JUSTICE.

DEPARTMENT OF JUSTICE USED LAMBORN & CO. AS ITS IMPORTING AGENT TO RELIEVE THE SHORTAGE OF SUGAR EXISTING IN 1920.

Lamborn & Co., a partnership of 132 Front Street, New York City, sugar brokers and importers, were in the spring of 1920 members of the Department of Justice's importers committee, and were used by the Department of Justice, as its agent for the importation of sugar from the Argentine to relieve the shortage which then existed in the United States.

Immediately following the negotiations with Department of Justice officials, Lamborn & Co. arranged for the importation, and did import, the sugar above referred to. As a result of this and other importations of a similar nature, and the propaganda and advertising occasioned thereby, the shortage of sugar in this country was relieved and prices declined. As a direct result of the decline in prices so brought about, when the sugar arrived in this country, Lamborn & Co. could not sell it at cost and suffered a loss thereby of approximately $570,000.

RESOLUTION TO HAVE SUGAR EQUALIZATION BOARD ADJUST THESE LOSSES.

The purpose of this resolution which has been introduced on this matter is to authorize the President to direct the Sugar Equalization Board (the Government's sugar corporation) to take over this transaction for Lamborn & Co. and adjust the losses sustained by them and pay same out of the profits made by the Sugar Equalization Board in its dealings in sugar.

SIMILAR RESOLUTIONS PASSED FOR OTHER IMPORTERS.

Resolutions, Senate Joint Resolution 12 and Senate Joint Resolution 79 covering losses of a similar nature sustained by other importing firms, who, acting for the Department of Justice, made such importations, have already passed the Senate.

The report of the Senate committee to accompany Senate Joint Resolution 12, being Report No. 72, Sixty-seventh Congress, first session, states the reason for the action of the Department of Justice so clearly that we desire to quote from it here (p. 1):

"This resolution and the necessity for this action is the result of a campaign inaugurated by the Department of Justice to reduce the high price of sugar prevailing during the spring and summer of 1920. When sugar was selling at from 26 to 30 cents a pound at retail, the Department of Justice attempted to secure a large supply from the Argentine Republic, with the aid of the State Department. There were two difficulties: First, there was an embargo in the Argentine against the exportation of sugar; and, second, the Department of Justice needed the cooperation of private agencies to have the sugar purchased and distributed."

The action and purpose of the Department of Justice is further shown in Senate Report No. 240 to accompany Senate Joint Resolution 79, Sixty-seventh Congress, first session, in which it is stated (pp. 2 and 3):

"In the spring of 1920 the Department of Justice, having learned that there was a supply of sugar in the Argentine Republic, undertook through certain private agencies, including P. De Ronde & Co. (Inc.), to import a substantial quantity of Argentine sugar for distribution among certain essential users in the United States. At that time there was an embargo against exporting sugar from the Argentine Republic. Through the efforts of the State Department of the United States the Argentine Government agreed to lift this embargo on a limited quantity of sugar, and on May 22, 1920, said embargo was lifted by decree of the Argentine Government. * * * Thereupon producers and others were permitted to export sugar from Argentine under certain conditions and restrictions as set forth in said decree. * * *

"The fact of the importation of Argentine sugar was largely heralded in the public press and elsewhere in the United States, and as a result, very soon after placing these orders, the price of sugar in the American market began to decline. * * *

"By the time the Argentine sugar arrived in the United States the price of sugar in this country had further declined and there was then no market for this importation.

* * * * * * *

"On July 8, 1918, the President, pursuant to the provisions of an act of Congress approved July 1, 1918, entitled 'An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1919, and for other purposes,' had directed Mr. Herbert Hoover, as United States Food Administrator, to proceed with the formation of a corporation to be known as the United States Sugar Equalization Board (Inc.), for which $5,000,000 was appropriated. All of the capital stock of said corporation was held by the United States. This corporation purchased the entire Cuban sugar crop of 1919, a large part of which was sold to the American people at prices much lower than consumers would otherwise have had to pay, and in so doing the United States Sugar Equalization Board (Inc.) realized a profit of $39,000,000 for the United States Government. Thirty million dollars of this money has already been paid into the Treasury of the United States, and the balance remains in the hands of said board. It is the purpose of this resolution to direct the United States Sugar Equalization Board (Inc.) to ascertain the true amount of losses sustained on account of the purchase of the 5,000 tons of Argentine sugar by P. De Ronde & Co. (Inc.) and to pay the same out of the funds on hand in the treasury of said board."

DEPARTMENT OF JUSTICE NEGOTIATIONS FOR ARGENTINE SUGAR.

As early as April 26, the Department of Justice learned that there was a surplus of sugar in the Argentine and began negotiations for the importation of this sugar. This surplus was estimated at between 100,000 and 150,000 tons.

Mr. Howard Figg in his letter of May 11, page 8 of the hearings before the Committee on Agriculture of the House, Sixty-seventh Congress, first session, House Joint Resolution 78 stated:

"I was notified by the State Department of the receipt of cable from the Argentine that upon proper presentation through official channels of the American Government that the Argentine would lift the embargo on present surpluses in that country, now amounting to some 150,000 tons. The American attaché, however, estimates the surplus at approximately 70,000 tons. * * *

"I have figured that your firm (The American Trading Co.) would handle approximately 10,000 tons of this sugar, the balance to be handled by firm or firms that I may indicate hereafter."

Mr. Figg then made arrangements with the American Trading Corporation to purchase a large quantity of this sugar providing export license could be arranged for. He made arrangements with B. H. Howell, Son & Co., to distribute sugar so purchased by the American Trading Co. He then endeavored to find importers who would import the balance of the 150,000 tons if he and the State Department succeeded in getting export permits.

LAMBORN & CO. CALLED TO WASHINGTON TO CONFER ON SUGAR SITUATION.

On May 7, 1920, in pursuance of this purpose, namely, the importation of foreign sugar, the Department of Justice, through Assistant Attorney General Figg, wired Lamborn & Co. to attend a meeting at the Department of Justice on May 10. The wire is as follows:

WASHINGTON, D. C., *May 7.*

A. H. LAMBORN & Co., *New York City:*

You will please be present at a conference to be held in my office, Department of Justice, Washington, D. C., on Monday, May 10, at 11 a. m., for the purpose of considering certain questions in reference to sugar.

HOWARD FIGG.

It was impossible to arrange this meeting and a second invitation was sent on May 17; it is as follows:

WASHINGTON, D. C., *May 17.*

A. H. LAMBORN & Co., *New York City:*

You will please be present at a conference to be held in room 301, Department of Justice, Thursday, May 20, at 11 a. m., for the purpose of considering the sugar situation.

HOWARD FIGG.

Pursuant to this request, Messrs. A. H. Lamborn, Gerard P. Tameling, and B. Wheeler Dyer, members of the firm of Lamborn & Co., together with other large sugar importers and dealers of New York City, went to Washington to attend the conference on May 20. Because of delays in the Department of Justice, it was necessary to postpone this meeting until May 21.

IMPORTERS COMMITTEE APPOINTED.

Various Department of Justice officials, including Attorney General A. Mitchell Palmer, Assistant Attorney General Howard Figg, and Assistant Attorney General Armin W. Riley, were in attendance at the May 21 meeting. The sugar situation was thoroughly discussed and an importers' committee was appointed with the approval of the Department of Justice. The committee consisted of Czarnikow-Rionda, Minford Lueder & Co., and Lamborn & Co. It was appointed for the purpose of cooperating with the Department of Justice in ascertaining the supplies of sugar throughout the world. It was also to assist the Department of Justice in the importation of these supplies to relieve the shortage in the United States, and bring about cheaper prices to the ultimate consumer.

ATTORNEY GENERAL A. MITCHELL PALMER'S TESTIMONY RELATIVE TO CONFERENCE WITH IMPORTERS.

This purpose is shown by the testimony of Attorney General A. Mitchell Palmer given January 21, 1921, before the House Committee on Agriculture (p. 36 of the sugar hearings) in which he states:

"Mr. Chairman, in the spring of 1920, when there was considerable stress in the sugar situation in this country, and the retail price of sugar had in many sections reached as high as 30 cents a pound, the Department of Justice was making a strenuous effort to relieve the people from that condition, both by enforcement of the criminal section of the Lever Food Control Act, and by various other methods, acting under our general designation of authority by the President, who had transferred to the Attorney General the then remaining powers of the Food Administration. * * *

"At that time information was brought to the Department of Justice that there was a very large quantity of sugar in the Argentine Republic, which might be imported into this country at a price which would be considerably below the then prevailing market prices here; and the effect of which might be—and it was hoped it would be—a decrease in the price of sugar generally in the United States."

Mr. Palmer further stated in his letter to Senator Moses, dated April 29, 1921, and which letter is made a part of the hearings before the Senate Committee on Agriculture, Sixty-seventh Congress, first session, Senate Joint Resolution 12, and appears on page 24.

"I did know, of course, that there was a large quantity of sugar in the Argentine which it was desirable to import into this country. I believed then that it would have a very considerable effect in reducing the price of sugar in this country, and I am satisfied now that the publicity given to this proposed importation did have a very considerable effect in bringing the price of sugar down here. * * * On two occasions conferences were held at my office with importers and refiners, which Mr. Riley attended, and his instructions made it necessary for him to have further conferences with such importers and refiners in reference to the sugar situation."

The report given out by Attorney General Palmer of the meeting held at his office in Washington on May 21, which report is contained in the Journal of Commerce of New York of the date of May 22, reads as follows:

"Attorney General Palmer held a conference to-day with representatives of sugar importers and discussed that phase of the general sugar situation. He urged upon the importers the necessity of increasing the volume of incoming sugar shipments, in order that available supplies of sugar might be increased to meet the demand.

"The Attorney General was told of the many difficulties in the way of increasing sugar imports. * * * Nevertheless the importers promised to appoint a committee to work with the Department of Justice in increasing sugar imports if possible."

At the Washington meeting, when the committee of importers was appointed, it was arranged with the Attorney General and Assistant Attorneys General, for the importers to submit reports to Mr. Riley, the Assistant Attorney General showing all sugars contracted for, when they would arrive, the prices paid, to whom they would be distributed and at what price. This was done so that the Department of Justice would know the amount necessary to be imported and to whom such importations should be distributed. Shortly thereafter, Lamborn & Co., submitted the list requested, to Mr. Riley at his New York office.

Assistant Attorney General Armin W. Riley was appointed by the Attorney General to take charge of the sugar situation generally throughout the country. He established an office in the post office building at New York.

DEPARTMENT OF JUSTICE HAD ARGENTINE EXPORT EMBARGO REMOVED.

On May 22, 1920, as a result of the efforts of the Department of Justice, the Argentine Government lifted the embargo on 100,000 tons of sugar. The executive order accomplishing this result will be found on page 49 of the House Committee on Agriculture hearings on House Joint Resolution 78, Sixty-seventh Congress, first session, and is as follows:

Acts of the executive power, minister of hacienda. Permission for exportation of 100,000 tons of sugar. Exp. 2249–H920–D. No. 7.

BUENOS AIRES, *May 22, 1920.*

The executive power of the nation, in general agreement with the ministers, decrees:

ARTICLE 1. Under the conditions hereinafter set forth and up to the quantity of 100,000 tons, the exportation of sugar is authorized for the period of 90 days.

ART. 2. Every exporter shall address himself to the minister of hacienda, soliciting the respective permission, which shall be accompanied by a detailed note giving quantity, class, and location of the product which it is proposed to export.

ART. 3. The permit shall only be granted when verification of the conditions set forth by the petitioner has been made by the offices of the internal revenue department.

ART. 4. The petitioner shall also submit vouchers in the case showing that he has deposited to the order of the ministry of Hacienda a quantity of refined sugar, pilet type, equivalent to 30 per cent of each lot. All expenses, losses, and wastage or damage shall be for exclusive account of the depositor.

ART. 5. The executive power, in the case that during the 90 days the retail sale price of sugar in the consuming markets of the republic should rise above that of 4.60 per 10 kilos for granulated white sugar and 5.50 per 10 kilos for refined sugar, pilet type, shall deny all further export permits and shall proceed to the immediate sale, in the form which he may consider most convenient, of all the sugar deposited to his order by the exporters in guarantee of the stability of the price. Should this situation become a fact, the executive power shall allow the depositors as sale price that of 4.10 kilos of the net product resulting at the time the guaranty is made effective.

ART. 6. The exportation of sugar shall be subject to all the dispositions and customhouse duties in force in accordance with the respective laws and regulations.

ART. 7. If during the 90 days fixed the quotations should not rise above that of the prices fixed in article 4, the exporters may dispose freely of the lots deposited as guaranty. Likewise during the course of the 90 days the ministry of hacienda

may permit the exchange of any one lot for another of the same quality and quantity, when verification has been made by the respective offices.

ART. 8. To be communicated, published, etc.

IRIGOYEN.
D. E. SALABERRY.
R. GOMEZ.
J. S. SALINES.
JULIO MORENO.
ALFREDO DEMARCHI.
P. TORELLO.
H. PUEYRREDON.

ASSISTANT ATTORNEY GENERAL RILEY MEETS IMPORTERS.

Shortly after the Department of Justice meeting and on May 25, 1920, the Assistant Attorney General Riley in charge of the sugar situation called together the committee of imprters above referred to, in a meeting at the office of Messrs. Czarnikow-Rionda New York City. At this meeting were Messrs. A. H. Lamborn, G. P. Tameling, E. L. Lueder, Manuel Rionda, B. Braga Rionda, and Assistant Attorney General Armin W. Riley. The announcement of this meeting was published in the New York Times of May 25.

At this meeting the matter of the importation of sugar generally was discussed and the matter of the importation of the sugar from the Argentine above referred to was especially gone into. It will be borne in mind that at this time Assistant Attorney General Riley was endeavoring to get additional importers to import the sugars from the Argentine as soon as the export permit could be issued. He endeavored to have the members of the importers committee make these importations. In his testimony page 41, Senate hearings on Senate joint resolution 12 above referred to he states:

"I thought I might attempt, so as to facilitate matters, to outline from the time this thing was turned over to me by the Attorney General, when he said 'from now on you are in charge of the sugar situation.' He didn't go any further than that in detail, because he was familiar with what I had done, and I understood the situation.

"So, when I left the office, I went downstairs to Mr. Figg's office for the purpose of becoming familiar with what he had done or anything he may have done that I had not learned. I knew this Argentine question was in negotiation.

"We discussed it, as I said before, with the two purposes in view, namely, of bringting in sugar, increasing the supply, and secondly, to break the high prices. He told me the general scheme by which they proposed to bring this sugar into this country.

"There were about 70,000 tons, as I understand it, and these people with whom he had negotiated, the American Trading Co., were to take a small part of that, and the balance was to be taken up by other people. I believe that was Mr. Figg's understanding, and I believe there is a letter in the record from Figg to the company to that effect, saying they would take about 10,000 tons, and the rest of it would be taken up by other people.

"I think somebody asked whether any report had been made to the State Department of a certain quantity of sugar which had been releaased, a certain amount had been purchased. As far as I know, there was no reason why anybody should go to the State Department about it. They could just go ahead and get the sugar and bring it in, provided they would distribute it along the lines we indicated, to the essentail industries, and at a profit which we attempted to control. * * *

"I negotiated with these people, who were the representatives of the sugar industry, the importers represented by a certain committee, and the refiners, dividing them into those two classes."

LAMBORN & CO. URGED TO HELP RELIEVE SUGAR SHORTAGE.

As stated above, at this meeting and at the former meeting, Lamborn & Co. were requested and urged to scour the globe for sugar to relieve the shortage and were especially urged to import some of the Argentine sugar.

It will be noted that also no minutes were taken of these meetings and no record was kept concerning them. Mr. Riley states in the hearing on page 44, Senate joint resolution 12 above referred to:

"Senator GOODING. Why did you not have some record made of all these transactions? Was it not necessary?

"Mr. RILEY. It had not been done in any instance. The Attorney General himself had met these people continually and never had, as far as I know, any written communication."

DEPARTMENT OF JUSTICE CONTEMPLATED NO LOSSES, HENCE NO ARRANGEMENT WAS MADE WITH ITS IMPORTERS TO TAKE CARE OF LOSS.

Both Assistant Attorney General Riley and Mr. Floyd, his statistician, were of the opinion that with such a shortage of sugar existing throughout the world and especially in the United States, the importers would sustain no losses on these importations which the Department of Justice urged them to make. Hence, no definite arrangements were made to take care of any losses which the importers might sustain.

FOLLOWING ABOVE NEGOTIATIONS LAMBORN & CO. ARRANGED EARLY SHIPMENT OF 1,000 TONS ARGENTINE GRADE A GRANULATED SUGAR.

As a result of these negotiations with the Department of Justice, Lamborn & Co. arranged for the purchase and early shipment of 1,000 tons of Argentine granulated grade A sugar.

The following cables between Lamborn & Co., New York, and their branch office in Buenos Aires show the first contract for 1,000 tons of Argentine sugar as entered into by Lamborn & Co.

BUENOS AIRES, ARGENTINA.

LAMBORN & Co.,
Sugar Export Department:

Refer to your last telegram 81: Have bought Moss 1,000 tons of 2,240 pounds grade A granulated 21½; shipment next week. Sealed samples will be delivered us for check. [Four words mutilated.] Open confirmed credit immediately.

LAMBORN & Co.

NEW YORK, N. Y., *May 25, 1920.*

LAMBORN,
Buenos Aires, Argentina:

77, 79 received. Confirm 1,000 tons of 2,240 pounds grade A granulated 21½ c. i. f. New York. Telegraph name of steamer immediately, request steel steamer, not *Faith*, which unsatisfactory sugar cargo. Will open a credit immediately if sellers insist, but strongly urge shipment payment in exchange for documents New York without credit opening. Advise sellers our business principally sugar for 30 years have acted brokers merchants 700,000 tons Cubas this year on open terms, our moral financial standing highest; refer National City Bank, Guaranty Trust Co., Irving National Bank, Bank Manhattan. Will greatly facilitate, also increase business if Argentine offerings make on open terms to reputable American sugar houses unquestionable character like Lamborn and others; explain advisability to sellers; endeavor to arrange telegraph reply quickly.

LAMBORN & Co.

BUENOS AIRES, ARGENTINA, *June 12, 1920.*

LAMBORN & Co.,
Sugar Export Department, New York, N. Y.:

Refer to your last telegram 9: 1,000 tons (2,240) Moss license have been granted, will commence loading to-morrow in Rosario; steamer *Balzac*. Credit has been received.

LAMBORN.

DE RONDE CONTRACT.

Early in June, 1920, Assistant Attorney General Armin W. Riley, as shown by the hearings and report of Senate Joint Resolution 79, requested P. De Ronde & Co. to import 5,000 tons of the Argentine sugar, and contracts were made by P. De Ronde for such importation. As heretofore stated, the resolution covering their losses, has already passed the Senate.

MEETING OF JUNE 7 BETWEEN THE IMPORTERS' COMMITTEE AND ASSISTANT ATTORNEY GENERAL RILEY.

On or about June 7, the importers' committee, including Mr. A. H. Lamborn, of Lamborn & Co., met with Assistant Attorney General Armin W. Riley, at his office in

the post-office building, New York City, and again the matter of importation of sugar was discussed. At this meeting the Assistant Attorney General again urged Mr. Lamborn to bring in the Argentine sugar and impressed upon him the fact that when such sugar was imported, it should not be resold within the trade. On this subject Assistant Attorney General Riley issued the following statement:

"This department must again call the attention of the sugar brokers throughout the United States to the prohibition existing against resales of sugar within the trade. It is the policy of this department that sugar follow the normal and direct channels of the trade from the producer to the consumer, and any deviation from this course which tends to enhance the price will be considered a violation of regulations affecting holders of sugar licenses."

Of this meeting, Assistant Attorney General Riley testified (see hearings, Committee on Agriculture, United States Senate, on Senate Joint Resolution 12, 67th Cong., 1st sess., p. 38):

"I wanted to get as much sugar into this country as possible. I sent a formal invitation to the committee representing the importers, Czarnikow Rionda, Minford Lueder & Co., and Lamborn & Co., to come and meet me in my office, and I said to them: 'Gentlemen, can't you bring sugar into this country? We need it.' They knew the situation. We had these conferences in my office; I didn't get them to put it into writing."

SECOND CONTRACT FOR 1,000 TONS.

The following cables between Lamborn & Co., New York, and their branch office in Buenos Aires show the signing of the second contract for 1,000 tons of Argentine sugar:

LAMBORN & CO.,
Buenos Aires, Argentina, June 10, 1920.

Referring to your telegram 5, accept 1,000 tons grade A, granulated, 20 cents, c. i. f. New York, provided license has been granted already; also shipment must be made within 10 days; will open a credit Bairęs when your confirmation received.

LAMBORN & CO.,
Buenos Aires, Argentina, June 15, 1920.

Have bought signed contract Portalis 1,000 tons (2,240 pounds) granulated grade A 99°, 20 cents c. i. f. New York City, shipment before June 25. License has been granted, but purchase subject to new prohibitive decree owing to protest retail. Open a credit in favor of Portalis confirmed irrevocable up to June 30.

SHIPMENT OF SUGAR FROM THE ARGENTINE.

Because of the urgent necessity of immediate importation of the Argentine sugar as requested by the Department of Justice, Lamborn & Co. in contracting for their sugar arranged for early shipment. On June 15 the steamship *Balzac* had completed the loading of the first 1,000 tons of the Lamborn & Co. shipment at Rosario, Argentina, and immediately proceeded to Buenos Aires, where the second 1,000 tons were loaded, and from where the vessel sailed on June 25, 1920. These facts are shown by the duplicate invoices, copies of which are as follows:

[Duplicate.]

BUENOS AIRES, *June 16, 1920.*

Messrs. LAMBORN & CO., *New York:*

Loaded on steamship *Balzac*, at Rosario Port, a Moss y Cia., June 16, 16,667 bags granulated Argentine sugar, 1,000,020 kilos, equal to 2,204,630 pounds, at $21.50 (United States currency) per 100 pounds; gross, $473,995.45; c. i. f. New York. Insurance to be covered by buyers. Say, $473,995.45, United States currency. Marks, "Lujan L."

BUENOS AIRES, *June 25, 1920.*

Senores LAMBORN & CO., *New York:*

Portalis & Cia., Limitada, 14,514 bags of Argentine white granulated sugar with 2,239,850 pounds, at $0.20 American gold per pound, c. i. f. New York. American gold dollars, $447,970.

(Stamp:) Original passed for payment July 27, 1920.

and by the two ocean bills of lading, copies of which are on file with Lamborn & Co. and with the United States customs office, New York. The essential features of these ocean bills of lading are as follows:

[Lamport & Holt Line, River Platte, Brazil, West Indies and United States Service.]

JUNE 16, 1920.

Shipped in apparent good order and condition by Moss & Co. per steamship *Balzac*, lying off port of Rosario, bound for New York, 16,667 bags of sugar, marked "Lujan L," granulated quality. Unto order. Notify Lamborn & Co.; prepaid.

BOADLE WALLACE, *Agents*.

Second bill of lading:

[Lamport & Holt Line, River Platte, Brazil, West Indies and United States Service.]

JUNE 25, 1920.

Shipped in apparent good order and condition by Portalis & Cia. (Ltd.), in the steamship *Balzac*, lying off the port at Buenos Aires and bound for New York, 14,514 bags of sugar, unto order, prepaid.

BOADLE WALLACE, *Agents*.

The sugar arrived in New York on July 21, 1920.

LAMBORN & CO.'S IMPORTATION FIRST OF THE ARGENTINE SUGAR TO ARRIVE IN THIS COUNTRY.

The De Ronde shipment referred to in Senate Joint Resolution 79 did not leave the Argentine until July 29, eight days after the Lamborn & Co. sugar arrived in New York. The American Trading Co. sugar did not leave the Argentine until some time in August, several weeks after the Lamborn & Co. sugar arrived in New York. It is therefore clear that Lamborn & Co. carried out the instructions of the Department of Justice with more alacrity than did any of the other importers acting as agents for the Department of Justice.

RESALES.

Acting under the direction of the Department of Justice Lamborn & Co. contracted for the resale of as much of this sugar as possible to essential users and through the direct channels to the trade without making resales in the sugar trade.

These sales were made at a contract price of less than 1 cent per pound on the average above actual cost, as directed by the Department of Justice.

Because of the rapid decline in the sugar market, as above referred to, it was impossible for Lamborn & Co. to contract for the sale of all of this sugar, and as a result they were forced to distribute the sugar on consignment to their corresponding brokers and representatives in various large markets for direct sale to wholesale grocers and manufacturers at considerably less than the cost price of the sugar.

The details of the contracts and sales of this sugar and the loss sustained thereby are shown by the verified, itemized statement printed hereafter.

Because of the decline in the sugar market Lamborn & Co. were unable to contract for the sale of any of the second 1,000-ton contract, being the purchase from Portalis. They only succeeded in contracting for the sale of 8,433 bags of the first 1,000-ton contract of 16,667 bags, leaving a balance not contracted for of 8,234 bags, the actual cost of the first 1,000 tons, of which part was sold by contract, was as follows:

Price	$473,995.45
Duty	30,582.81
Weighing and mending bags	1,666.70
Tallying charges	33.68
Insurance	3,132.00
Lighterage	865.62
Total cost of the first 1,000 tons	510,276.26

The net landed weight of this shipment was 2,164,349 pounds, making the actual cost to Lamborn & Co. of these 1,000 tons of 23.576 cents per pound.

The following table shows the details of the sugar contracted for sale:

Bags.	Purchaser.	Weight.	Price.
		Pounds.	
525	Erie Food Products Co	67,933	$0.245, less 2 per cent.
1,050	New England Pie Co	136,106	$0.255, less 2 per cent.
908	H. E. Motts & Co	117,798	$0.21, net.
1,050	Jacob Haller	136,406	$0.245, less 2 per cent.
525	C. A. Curtze	68,173	Do.
525	McKusic Towel Co	68,333	Do.
525	P. Minnig Co	68,313	Do.
875	T. S. Southgate Co	113,668	Do.
875	J. H. Hornby & Son	113,208	Do.
1,050	Grand Rapids Wholesale Grocery Co	136,326	Do.
525	Hillsdale Grocery Co	68,533	Do.

A number of those purchasing the sugar by contract, as above stated, refused to accept the sugar when it arrived in this country, owing to the decline in the market, brought about by the Department of Justice's activities in this matter.

The above table shows that the average net price Lamborn & Co. were to receive for the sugar they had contracted to sell, after the 2 per cent for cash had been deducted, was 23.91 cents per pound net. Deducting the cost of the sugar above given of 23.576 cents per pound from this net contract sale price we find that Lamborn & Co. were to receive on an average approximately one-third of 1 cent per pound profit, or 0.334 cent per pound for making this importation.

It must be borne in mind, however, that only 8,433 bags were sold by contract, the balance of 8,234 bags comprising this 1,000-ton shipment and all of the remaining shipment of 1,000 tons were sold on consignment through corresponding brokers and representatives, and the total loss, as shown by the itemized statement, was approximately $570,000.

Statement showing losses Lamborn & Co. sustained in importing 2,000 tons of Argentine sugar for the United States Department of Justice.

Cost:	
16,667 bags of sugar	$473,995.45
14,514 bags of sugar	447,970.00
Duty paid the United States	59,143.21
Insurance	3,817.51
Delivery	3,118.10
Lighterage	4,387.10
Bank charges	3,067.01
Cables	22.50
Tallying charges	33.22
Total costs	995,554.10
Receipts:	
Sales on contracts not repudiated	129,593.45
Resales of repudiated contracts	40,420.44
Sales on consignment at best possible market price	254,963.19
Total net receipts	424,977.08
Net loss to Lamborn & Co	570,577.02

STATE OF NEW YORK,
County of New York, ss:

I, R. Henry Way, being duly sworn, on oath depose and say that I am comptroller for Lamborn & Co., having charge of the financial records of said partnership; that the itemized statement above set forth is a true and correct statement of the losses sustained by Lamborn & Co. on the importation of 2,000 tons of Argentine sugar, according to the records and documents on file with Lamborn & Co.

R. HENRY WAY.

Subscribed and sworn to before me this 15th day of February, 1922.

JOSEPH N. LO MEDICO,
Notary Public.

LAMBORN & CO.'S CLAIM AS COMPARED WITH THE CLAIMS ABOVE REFERRED TO WHICH HAVE ALREADY PASSED THE SENATE.

In the statements which we are about to make we do not intend in any way to criticize the two claims above referred to because we think they are just claims, and the Senate was correct in allowing them. The only purpose we have in mind in making mention of these claims is to compare them with the claim of Lamborn & Co. to show the justness of Lamborn & Co.'s claim, the similarity of the claims, and the points wherein Lamborn & Co.'s claim excels those above referred to.

Lamborn & Co. have been in the sugar business for approximately 30 years. There are 11 members of this partnership, 7 of them being residents of the State of New Jersey, 3 of them residents of the State of New York, and 1 of the members being a resident of the State of Pennsylvania.

Lamborn & Co. were representatives in the United States of the Royal Sugar Commission of England during almost the entire period of the war. It may be truly said that Lamborn & Co. stand among the foremost of the sugar dealers throughout the world in the amount of business carried on and the businesslike and honest methods of transacting such business. It is clear, therefore, from the enormous sugar business of Lamborn & Co., that in importing the Argentine sugar referred to in this statement, they did not embark on a new undertaking. They did not venture into new fields of business unfamiliar to themselves for the purpose of possible gain in obtaining the commission of less than 1 cent per pound allowed by the Government. Because of Lamborn & Co.'s large experience in dealing with matters of this nature, it follows that the Department of Justice would naturally go to Lamborn & Co. for assistance when they desired sugar importations of this nature.

The firm of Lamborn & Co. was one of the three members of the importers' committee appointed with the approval of the Department of Justice. The duties of this committee were to cooperate with the department in importing sugar from unusual sources, thus relieving the shortage then existing. As members of such committee, Lamborn & Co. were in constant touch with the Department of Justice. Mr. Riley, of the department, was in consultation almost daily with some members of the firm of Lamborn & Co. or with some of its employees. He had the full cooperation of Lamborn & Co. in his work. It was only natural therefore that when he was looking for importers who could import the Argentine sugar he should call upon Lamborn & Co. to assist him in this matter.

Prior to the importation of the Argentine sugar, Lamborn & Co. had contracted for thousands of tons of sugar to be shipped from the island of Java, the island of Mauritius, from India, Brazil, Czechoslovakia, Hongkong, China, and other remote portions of the globe. This sugar was to be shipped at a later date, depending entirely upon the date of the sugar harvest in the particular locality from whence it was to come. Practically all of the sugar so contracted for prior to the time of the Argentine contracts was for shipment during the summer and fall of 1920. These were the earliest dates possible in view of the crop situation in the respective countries.

Because of the large contracts for such importations, which contracts were made prior to the Argentine contract, Lamborn & Co. were not desirous of obligating themselves for any further amount of foreign sugar in addition to that which they had already purchased; but upon urgent solicitation of the Department of Justice and to assist in relieving the shortage then existing they did contract for the Argentine sugar herein referred to. Indeed, if it is true, and we do not doubt the facts which have been sworn to by Government officials, that the Argentine shipments and the advertising resulting therefrom broke the sugar market, then Lamborn & Co. by their act of importing this sugar were directly responsible in causing a loss of several million dollars to themselves. This loss was occasioned by the fact that when the market dropped Lamborn & Co. were left with thousands of tons of sugar contracted for at prices averaging above 20 cents per pound for importation and delivery during the summer and fall of 1920. When the market dropped it was impossible for them to realize 50 per cent on the cost price of this sugar. Hence, by their own act in importing Argentine sugar and assisting to break the market they assisted in bringing upon themselves losses aggregating several million dollars.

The 2,000 tons of sugar they imported were part of the same lot of 100,000 tons which had been released for export by the Argentine Government at the solicitation of the Department of Justice and the Department of State.

It was the understanding of Lamborn & Co. and the understanding also of the Department of Justice that the importation of the Argentine sugar was to be made immediately in order to relieve the then existing shortage. Acting upon this understanding, Lamborn & Co. arranged for the immediate importation of the sugar they contracted for. In this respect the claim of Lamborn & Co. stands on a higher footing

than either of the claims above referred to. The American Trading Co. were waiting to get a special permit for the importation of the sugar they purchased. The permit they desired and which they finally obtained relieved them of the necessity of putting up a 30 per cent deposit of the amount of sugar so exported. Because of the delay occasioned by this special permit they did not ship the sugar purchased by them to the United States until the middle of August. The De Ronde Co., although acting under the general export order, the same as that used by Lamborn & Co., contracted for a later delivery on their sugar, and hence the sugar they purchased did not leave the Argentine until July 29. Lamborn & Co., on the other hand, realizing that the sugar must be imported at the earliest possible date to meet the shortage, contracted for shipment, and did ship as soon thereafter as possible. The first 1,000 tons were loaded and shipped from Rosario, Argentina, before the 16th of June. The second 1,000 tons were loaded and shipped from Buenos Aires before the 25th of June. The complete cargo arrived in New York on the 21st day of July, eight days before the vessel carrying the De Ronda sugar left the Argentine, and several weeks before the vessel carrying the American Trading Co. sugar had departed from the Argentine. If, therefore, there is any merit in the contention of the Department of Justice that the shipment of this sugar broke the market and relieved the shortage, Lamborn & Co.'s shipment, being the first to leave the Argentine and the first to arrive in New York, undoubtedly had the greatest effect in breaking the market.

The sugar purchased by Lamborn & Co. was purchased from exporters in the Argentine who had already placed the necessary 30 per cent sugar deposit. Because of this fact Lamborn & Co. were compelled to pay a higher price for the sugar than did the other concerns above referred to; but immediate shipment being the prime requisite, Lamborn & Co. arranged for immediate shipment. The Department of Justice had the same understanding with Lamborn & Co. relative to the fact that resales were to be made through the regular channels and not in the trade as were had with the other importers above referred to. Lamborn & Co. contracted to resell the sugar they imported at one-third of 1 cent per pound profit, while De Ronde & Co. were to receive 1 cent per pound on their shipment and the American Trading Co. and B. H. Howell Son & Co. each 1 cent per pound on the shipment which they made jointly.

LEGAL AND MORAL OBLIGATIONS OF THE DEPARTMENT OF JUSTICE IN USING THESE IMPORTING AGENCIES.

There can be no possible question as to the legality of this plan to relieve the shortage of sugar as adopted by the Department of Justice. Former Attroney General Palmer, in his hearing before the House Committee on Agriculture, page 38, states:

"I say it was a lawful plan, therefore a proper plan. I say also that it was a beneficial plan to the people of the country and they got the benefit by it. At the time this proposed importation of Argentine sugar was on foot it got into the newspapers and a great deal of publicity was given it, and, like almost all other news of this character, it suffered not at all from wide distribution through the public press; and by the time it had gotten across the country there was a general report that a tremendous amount of this sugar was coming from the Argentine."

The present Attorney General agreed with the former Attorney General that the Government is legally and morally bound to pay on these obligations. In the testimony on House Joint Resolution 78 before the House Committee on Agriculture, on page 76, the following appears:

"Mr. TINCHER. It is your understanding that an agent of this Government can contract a legal liability for the Government without specific authority of law?

"Mr. DAUGHERTY. Yes; without specific authority. If the authority is constructive, an agent can commit his principal to a legal obligation, acting within the reasonable scope of the authority conferred upon him and a legal liability in connection, with all things incident to the act which the agent is called upon by the principal to perform.

"Mr. TINCHER. I understand that.

"Mr. DAUGHERTY. There might be some question as to the legal liability. As I say, I am not as sure on that question as I am on the moral obligation. I have not any doubt in my mind as to the moral obligation, as I understand the facts. Now, in a situation of this character—I may be wrong about it—if there is a moral obligation and a reasonable legal obligation, if this company was performing this service at the instance of the Government, as the agent of the Government, while I know the distress of the Government from the standpoint of its finances, yet the Government is the last organization and the last person that ought to welch on an obligation. That is my judgment about it."

The committee then called upon the Attorney General for a written opinion on the subject, and on January 17, 1922, by his assistant, Mr. Guy B. Goff, he sent a letter to Congressman Gilbert H. Haugen, chairman Committee on Agriculture, House of Representatives, Washington, D. C. In this letter is found the following:

"The Attorney General expressed the view before the committee that there was an undeniable moral obligation and, in his opionin, a legal obligation upon the Government. The committee has also been fully informed of all the facts from competent sources, as appears from the statements before it and the reports of the several committees which have considered the subject, including its own majority and minority report, No. 1275, dated February 1, 1921. The facts shown therein indicate the ground of legal liability. They are not, as far as can be ascertained, seriously questioned. They plead powerfully in behalf of the companies and show that it was in pursuance of authority to deal with the then existing high prices that the Attorney General became connected with the matter and used these companies to ameliorate that condition.

"The Attorney General, in the exercise of authority derived from the Lever Act and conferred on him by the President, was authorized to use means which were necessary and appropriate to provide the country with an adequate supply of sugar. That the arrangement between the department and Howell Co. and the trading company were proper means is, of course, beyond doubt, because it brought to pass the relief for which it was used and brought it to pass in a much greater measure than was expected. Indeed, its very efficacy is among the important facts causing the loss.

"As a matter of law, however, the question is rather whether these companies were such agencies as were intended in the Lever Act and the instrument conferring authority upon the Attorney General. The agencies there referred to were, of course—because of the peculiar situation then existing—not limited to such only as previously had been recognized or used; and, consequently, it is not necessary to establish here a strictly legal relationship of agency in which the agent is entirely subject to the control of the principal. Apart from the arrangement entered into with the department, these companies were independent importing and distributing agencies; but with respect to that arrangement, while retaining much of their independence, which, indeed, was necessary for the purpose, they were in a very large measure controlled by the department.

* * * * * * *

"In the view of the department there is no uncertain authority in law under which the Attorney General acted, nor is it possible to consider this subject as a legal matter apart from its equitable nature. The view that there is no legal liability is at best doubtful, and it must be kept in mind that as a legal and especially as a practical matter the equities which so strongly color the facts will distinctly tend to resolve doubtful legal questions in favor of the companies. These claims may, indeed, be termed debts of the United States, debts of that peculiar character which dictate relief at the hands of the Congress, as intimated by the Supreme Court in the following passage from United States *v.* Realty Company:

"'What are the debts of the United States within the meaning of the constitutional provision (art. 1, sec. 8)? It is conceded, and, indeed, it can not be questioned, that the debts are not limited to those which are evidenced by some written obligation or to those which are otherwise of a strictly legal character. The term "debts" includes those debts or claims which rest upon a merely equitable or honorary obligation, and which would not be recoverable in a court of law if existing against an individual. The Nation, speaking broadly, owes a "debt" to an individual when his claim grows out of general principles of right and justice; when, in other words, it is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law.'

"As stated in another letter to you upon the subject, in view of the peculiar obligation upon the Government in this case, in which there appears to be general acquiescence, it seems to the department, after a review of all the evidence, that the legislation should be passed.

"Respectfully,

"GUY D. GOFF,
"*Assistant to the Attorney General.*"

Lamborn & Co. made every effort to resell this sugar under the rules of the Department of Justice, but because of the rapid decline in the market they were unable to do so. They suffered a loss of approximately $570,000, as above stated. The complete itemized statement showing this loss, which statement has been sworn to by an official of Lamborn & Co., is hereto attached and made part of this statement. If

the Sugar Equalization Board, which was the Government's sugar corporation, had sustained this loss, the loss would be paid out of the profits made by that corporation from its handling of sugar for the Government. Here is a partnership which acted under the United States Department of Justice in the same manner as the sugar Equalization Board would have acted had it purchased the sugar herein referred to to relieve the shortage then existing. Lamborn & Co. were acting as agents for the Government in exactly the same manner as the Sugar Equalization Board would have acted had it been functioning at the time. The losses, therefore, which were sustained by Lamborn & Co. should be paid from the profits which have been made from the sugar dealings of the Sugar Equalization Board.

We respectfully submit this statement to the Senate and House of Representatives of the United States with the earnest hope and belief that they will pass the resolution herein referred to, authorizing the President to direct the Sugar Equalization Board to take over this transaction and adjust the losses to Lamborn & Co.

LAMBORN & CO.

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Tuesday, April 18, 1922.

The committee this day met, Hon. Gilbert N. Haugen (chairman) presiding.

There were present Mr. Haugen, Mr. McLaughlin of Michigan, Mr. Ward, Mr. Purnell, Mr. Voigt. Mr. McLaughlin of Nebraska, Mr. Tincher, Mr. Sinclair, Mr. Thompson, Mr. Gernerd, Mr. Clague, Mr. Clarke, Mr. Jacoway, Mr. Aswell, Mr. Kincheloe, Mr. Jones, and Mr. Ten Eyck.

Mr. HUNT. Mr. Chairman, Mr. Riley, the former Assistant Attorney General in charge of sugar matters is here. I asked him if he would come without subpœna and he said that it was perfectly all right with him.

The CHAIRMAN. We will hear Mr. Riley now.

STATEMENT OF MR. ARMAN W. RILEY, GARDEN CITY, LONG ISLAND, N. Y.

Mr. ASWELL. Mr. Riley, may I suggest in the interest of economy of time that the crux of this whole case is very definite, and that is to establish their connection with the Government. That is the main thing we want to find out.

Mr. RILEY. The connection of whom?

Mr. ASWELL. The connection of this company with the Department of Justice. That is the fundamental matter I think we want to hear you upon or, rather, that is my understanding of it.

Mr. RILEY. Would you want me just to corroborate that part of Mr. Lamborn's statement?

Mr. TINCHER. I think you had better make a statement of what you know about this case.

Mr. RILEY. The Lamborn case. Well, I was working in the Department of Justice as special assistant to the Attorney General, and my function was to investigate and prosecute violators of the Lever Act. That was the profiteering act. I received the reports of investigators of the Department of Justice from all parts of the United States, and then suggested their procedure; that is, whether it seemed to me the case warranted further investigation, and if so, to obtain certain facts and submit those facts to the local United States district attorney for presentation to the grand juries in their particular districts. I was engaged in this work for a long time, not solely in connection with sugar, but all the commodities which came under the Lever Act, which consisted of food and fuel and various other things of that sort. After I had been with the Government some time the sugar situation became acute, as you all know, and I had a very definite theory as to the way to handle it. It had become a very popular game to go into sugar speculation. Anybody who had sugar seemed to be able to sell it at any price he might demand. We had made various efforts through fair-price committees to cooperate with various industries and communities. In my opinion we had not obtained results as satisfactory as we should have obtained or had been led to expect. My theory was that there was a law on the statute books and that the only way to take the speculation out of sugar was to enforce that law strictly and emphatically throughout the United States. My attitude in the department finally was adopted—I persuaded, in other words, the Attorney General that that was the way for us to proceed, and in view of the fact that that was the way I had been proceeding, it was determined by him that I attempt to carry out that procedure and no

longer attempt to negotiate. This I proceeded to do, and presented many cases to the grand juries in different parts of the country, in New York State, Texas, St. Louis, and all over the country.

Mr. McLAUGHLIN of Michigan. The particular feature of the law you were investigating and proposed to enforce was the law against profiteering in sugar.

Mr. RILEY. Profiteering in any commodity that came up.

Mr. McLAUGHLIN of Michigan. Well, we are speaking of sugar now, particularly.

Mr. RILEY. Yes. You see the law provided for a reasonable profit. Now, there was never any price set, because in different communities the prices varied. If a man had bought sugar at this point for 10 cents, he could sell it at a reasonable profit. If another man had bought it over there at 15 cents, he could sell it at a reasonable profit. We could not say 16 cents was a reasonable price; we could only say what the margin of profit, in our opinion, should be. You can see why that would be the case. After consideration and consultation with various sugar interests, we came to the conclusion that 1 cent was quite sufficient to take care of the profits; and, in fact, more than people operating in sugar had ever obtained prior to that time in normal business. That is one point I would like to bring out, that the price was not set for these different people, but merely the margin of profit. You might ask, How could we enforce the margin of profit, and I always told the people with whom I came in contact, the various sugar interests, that if they stayed within that we would not proceed against them for violation of the Lever Act, but if they exceeded that then I would feel it was my duty to present the evidence to the grand jury or have it presented to the grand jury, and show the grand jury what we considered a reasonable profit, and if they thought what these people had made was unreasonable, an indictment would be returned against them and they would be prosecuted. That was the policy under which we proceeded. Now, that in itself, I think, was effective, but I do not think that in itself would remedy the situation which was confronting us. If you take the unusual profit out of sugar speculation, that would deter a great many people who are not ordinarily in the business from entering it. If, secondly, you would increase the supply of sugar in this country, that would give enough sugar to everyone and at the same time bring down the price, and that was the objective of the Department of Justice, namely, to increase the sugar supply and keep the price reasonable. Now, I do not know exactly where to proceed from that point; I mean, along what lines.

Mr. TINCHER. Do you not know that the committee wants you to tell us what you know about this sugar claim that is pending here.?

Mr. RILEY. Yes.

Mr. TINCHER. That would be easy, I should think, for a lawyer.

Mr. RILEY. I was directed by the Attorney General——

Mr. ASWELL. Did you request this firm to import sugar?

Mr. RILEY. I think I can hardly answer that yes or no, but I can tell you the circumstances.

Mr. CLARKE. Tell us the circumstances surrounding the whole transaction.

Mr. RILEY. The Attorney General invited, through one of his assistants, the sugar interests to attend a conference in Washington. I mean he invited the importers. You see we divided the sugar interests into two classes, those who were refiners and those who were importers and sugar merchants.

Mr. ASWELL. About how many importers came to that conference?

Mr. RILEY. My guess would be almost as many people were present as are present in this room.

Mr. KINCHELOE. Suppose you begin right there and continue on with this transaction.

Mr. RILEY. The Attorney General brought them together, I presume, with the idea of getting light and relief for the acute situation.

Mr. PURNELL. Do you know how they were solicited to get together?

Mr. RILEY. By a telegram or a letter inviting them to attend a conference in the Department of Justice here in Washington. They attended and the Attorney General told them of the predicament the country found itself in and asked them to give every aid to relieve that predicament; that is, to bring down the price and increase the supply. The number of people who were present made it unwieldly to act with ease, and he suggested that they appoint representatives.

Mr. KINCHELOE. Were you present at that conference?

Mr. RILEY. Yes, sir. Of course, the Attorney General was not familiar in detail with the different sugar phases and as I had been, I was there more or less to give him information.

Mr. KINCHELOE. I was just wondering whether you were there or not.

Mr. RILEY. Then the men who were there, the sugar importers represented, determined, as my recollection goes, on a committee of three, Mr. Lamborn, Minford,

Lueder & Co.—that is the firm name—I do not know whether it was Mr. Minford or Mr. Lueder, and the firm of Czarikow Rionda, and Mr. Rionda himself was there.

Mr. ASWELL. Did the Attorney General appoint these gentlemen or did the importers appoint them?

Mr. RILEY. My recollection was that they among themselves nominated these men and the Attorney General said, "That committee is quite satisfactory to me."

Mr. JACOWAY. Was that Mr. Palmer?

Mr. RILEY. Yes; the then Attorney General. After a general discussion of the situation, he said that he thanked them and would be glad to have their suggestions, and would meet with them or have some one meet with them again or have meetings with them again.

Mr. ASWELL. This firm is the only one in that assemblage of importers that acted. No other firm imported any sugar except this one among the importers who were present at that time?

Mr. RILEY. I do not know. I did not know at the time that they had purchased this sugar.

Mr. ASWELL. Was that conference prior to the request made by the Attorney General for these other gentlemen to import sugar or was it after he made this request.

Mr. RILEY. You refer to the American Trading Co.?

Mr. ASWELL. Yes.

Mr. RILEY. I did not know anything about that American Trading Co. matter.

Mr. ASWELL. All right, then.

Mr. RILEY. It was being conducted by Mr. Figg.

Mr. ASWELL. All right; go ahead.

Mr. RILEY. I asked Mr. Franklin at one time to give me the information and he refused to do so; I do not know why.

Mr. KINCHELOE. Now, what was said at this conference when these gentlemen assembled about what commission they were to get or what profit they were to get out of it, or was anything said about a loss or anything of that kind.

Mr. RILEY. No; the Attorney General, I believe, informed them that the department took the position that 1 cent would be considered a reasonable profit on sugar transactions.

Mr. KINCHELOE. Was that satisfactory to all of them and was it agreed upon there?

Mr. RILEY. No; they did not agree upon it; some disputed about it in view of the amount of money involved, etc., that that was not reasonable. Of course, they naturally would not accept it if they thought they could get more.

Mr. KINCHELOE. Well, was any margin of profit fixed?

Mr. RILEY. He made the flat statement that 1 cent would be considered proper by the department.

Mr. KINCHELOE. Did they all finally agree to that, notwithstanding they protested for a while?

Mr. RILEY. They did not dispute it. I mean it was a thing by which they would have to determine their future conduct.

Mr. SINCLAIR. It was not a question of their agreeing to it, anyway, because the department might prosecute them or reserve the right to prosecute them under the Lever Act if they took more.

Mr. RILEY. That was it.

Mr. THOMPSON. And that was your position?

Mr. RILEY. That is the position we took, and we just stated that to them.

Mr. KINCHELOE. The Lever Act did not specifically provide for 1 cent a pound profit on sugar.

Mr. RILEY. No.

Mr. KINCHELOE. That was left to the discretion of the Department of Justice.

Mr. RILEY. And we just said, "If you make in excess of that we will proceed against you."

Mr. KINCHELOE. In excess of what?

Mr. RILEY. One cent a pound.

Mr. KINCHELOE. The point I am making is that it was agreed to, at the suggestion of the Attorney General, that 1 cent was to be the profit.

Mr. RILEY. They conformed to it in most cases and while they discussed it with me in future and more intimate conferences, they agreed to do it. Mr. Lamborn and others agreed to 1 cent a pound——

Mr. PURNELL (interposing). The question of the margin of profit is not nearly so vital to the matter before this committee as what happened between the Attorney General and these men. Did these men act for and on behalf of the Government?

Mr. RILEY. You mean the men who brought in this particular sugar?
Mr. PURNELL. Yes.
Mr. RILEY. I think you have got to draw your own inference.
Mr. PURNELL. We can only draw it by having you tell us about it. You are a lawyer, are you not?
Mr. RILEY. Yes, sir.
Mr. PURNELL. Well, there are several lawyers around this table and you perhaps know what we want to know.
Mr. RILEY. I think I do.
Mr. PURNELL. These are extraneous matters.
Mr. RILEY. I did not know just what you wanted. I was asked about this question of profit.
Mr. PURNELL. I did not refer to the last question but these other matters you have related are matters of detail. What we want to know is what happened at that meeting. Was there any suggestion that if if this sugare was broguth in, the Government would reimburse them in case of loss.
Mr. RILEY. Now, you heard what happened at that meeting.
Mr. PURNELL. Part of it.
Mr. RILEY. That is all I think did happen.
Mr. TINCHER. After the meeting——
Mr. RILEY (interposing). After the meeting I met these importers and urged them to increase the supply of sugar. I did not care where they brought it from.
Mr. ASWELL. When did you first learn that Lamborn & Co. had imported 2,000 tons of sugar?
Mr. RILEY. Comparatively recently. You mean from the Argentine?
Mr. ASWELL. Yes.
Mr. RILEY. I think comparatively recently.
Mr. MCLAUGHLIN of Michigan. What do you mean by that?
Mr. RILEY. I did not know at the time they had bought this sugar or that they had contracted for this sugar.
Mr. MCLAUGHLIN of Michigan. You have not given us the date of these meetings.
Mr. RILEY. It was sometime in May. Now, you see, it was two years ago and my recollection is somewhat hazy.
Mr. MCLAUGHLIN of Michigan. You mean May of this past year?
Mr. RILEY. No; I think it was two years ago.
Mr. THOMPSON. May of 1920?
Mr. RILEY. May of 1920.
Mr. ASWELL. How did you learn about this matter? How was it brought to your attention then, long after the transaction?
Mr. RILEY. I heard of this claim.
Mr. ASWELL. Who brought it to your attention?
Mr. RILEY. Mr. Lamborn or somebody from his office told me they had brought in this sugar.
Mr. ASWELL. How long after the transaction was it that you first heard of it?
Mr. RILEY. I should say a year or a year and a half, maybe longer.
Mr. ASWELL. Did you have entire control of this importation of sugar? Had the Department of Justice given you full authority to act?
Mr. RILEY. Yes, sir.
Mr. KINCHELOE. How many subsequent conferences did you have with this firm from the time of your first meeting in Washington until this time?
Mr. RILEY. I was in constant touch with them during, we will say, May and June, not only in relation to their own particular business but with relation to the whole situation. I went over their books and accounts.
Mr. KINCHELOE. When did you learn that this sugar had been brought in and that a loss had accrued? Did they ever discuss this loss with you after it was over?
Mr. RILEY. Not until comparatively recently.
Mr. KINCHELOE. You mean recently from this date?
Mr. RILEY. A year or so after they had imported the sugar.
Mr. KINCHELOE. They did not discuss the loss with you until a year or two after it had occurred?
Mr. RILEY. Yes; and then they did not discuss it with me. They merely told me. They knew I had no funds and I had no relief to give.
Mr. THOMPSON. Can you tell me about when they imported this sugar?
Mr. RILEY. I think it was in May or June of 1920 that they contracted for it, and I believe it came in in July. I have no knowledge of this of my own.

Mr. ASWELL. I am interested to know why it was they did not keep you informed as to the fact they had imported the sugar. You were at the head of the thing. How did it happen you did not know anything about it.

Mr. RILEY. I think I can tell you that. They contracted for this sugar, but they were contracting for sugar all over the world. I do not know about that particular time, but at various times; and they did not tell me they had bought this certain shipment of sugar, and when it was brought in afterwards, when the price was going down, my interest then ceased, when I saw relief coming. I was just as actively interested then in coal as I had been in sugar prior to that time, so I had no further contact with them.

Mr. KINCHELOE. If I understand you, you had the matter in charge, so far as this claim is concerned or this firm is concerned, exclusively for the Department of Justice, from the time of the first meeting here in Washington until the thing was wound up. Now, during that time, at any of these conferences you had with them relative to this matter, was there any discussion about it before this loss came, as to whether they would be reimbursed if they sustained a loss by reason of this purchase of sugar?

Mr. RILEY. No; there was no discussion as to any reimbursement for any losses.

Mr. KINCHELOE. Did you make any representations to them in any of these conferences that they were representatives of the Government in buying this sugar?

Mr. RILEY. No, sir.

Mr. KINCHELOE. Did you so understand, that they were representatives of the Government in any way in buying this sugar?

Mr. RILEY. No.

Mr. KINCHELOE. And there was nothing at all suggested about a loss, if any accrued

Mr. RILEY. No, sir. I did not contemplate a loss for them, because, as I understood it, when these people or people of this type in this line of business purchased or contracted for sugar, they immediately resold it.

Mr. KINCHELOE. Of course you do not think any of them comtenplated a loss when they went into it, do you?

Mr. RILEY. No.

Mr. KINCHELOE. And there was no understanding on your part, as Assistant Attorney General in charge of this business for the Government, that the Government was to reimburse them if they sustained any loss?

Mr. RILEY. Not the slightest understanding on my part.

Mr. KINCHELOE. And the question discussed was the profit they were to receive?

Mr. RILEY. Yes, sir.

Mr. ASWELL. Did they sell this sugar in advance? When they contracted for it, did they place it?

Mr. RILEY. I do not know that they did.

Mr. ASWELL. Did you promise to give them a purchaser?

Mr. RILEY. No; but they had promised that they would sell the sugar in channels indicated by me.

Mr. MCLAUGHLIN of Michigan. Doctor, we can not hear your questions up here.

Mr. ASWELL. I asked him if he promised to supply purchasers as he did in some other cases; that is to say, did the Department of Justice say to them, "We will furnish the purchasers as soon as the sugar arrives." They did that in some cases.

Mr. MCLAUGHLIN of Michigan. And the answer to that question was what?

Mr. RILEY. No; I never promised anybody I would give them an individual who would buy that sugar from them, but when they entered into this agreement with us, they promised to sell the sugar along channels indicated by me, and the reason for that promise was that there was a great deal of sugar being consumed by what I considered nonessential industries at the expense of the essential industries; that is, the home and the preservers and the canners who saved our fruits and vegetables. That was the thing I emphasized. I pursuaded the refiners to give a certain percentage of their output to those channels, and those channels were represented by individuals, the president of the canners' association, the president of the preservers' association, the president of the Southern Wholesale Grocers' Association, and others who came there with lists of legitimate members of their industry, who were in dire need of sugar, and I told them, "We will direct into your channels so much sugar which will accommodate your requirements, but it is up to you to see that no one member gets more than his necessary amount."

Mr. ASWELL. When that sugar arrived, did they come to you and ask for information as to the disposition of it along those channels which you have described?

Mr. RILEY. Well, they did, in some instances.

Mr. ASWELL. But did this company come to you?

Mr. RILEY. No; I do not think they did.

Mr. LAMBORN. May I interject a statement right here? Our firm knew far better than anybody connected with the Department of Justice what the natural channels of trade were. That was our business, and they knew perfectly well that as long as we had given our word that we would cooperate with them, we would naturally distribute it in the natural channels of trade and we did not have to ask them nor did they have to ask us.

Mr. JONES. The 1 cent a pound profit that was agreed upon was to have universal application in this country so far as the profit on imported sugar was concerned?

Mr. RILEY. No; I would like to make this clear, because I think you should know this: That 1 cent a pound was determined upon prior to any contact with the importers.

Mr. JONES. Yes.

Mr. RILEY. It was for resale in this country of sugar already in this country, and that was the general announcement we made to the people of this country.

Mr. JONES. And that was for general application.

Mr. RILEY. Yes, sir.

Mr. JONES. Do you consider 1 cent a pound on imported sugar a reasonable profit?

Mr. RILEY. No; not on imported sugar, on sugar here; if they bought it from the importer, from the sugar people, they could turn it over right here for 1 cent.

Mr. JONES. It would be practically the same thing, if you allowed the cost of bringing it here, and then they allowed a profit of 1 cent a pound on that, would it not?

Mr. RILEY. This was the thing I wanted to make clear, so that you may have all the facts. I told you it related exclusively to importers, and I have told other people that I well understood the difficulties under which they were operating when they brought sugar from the uttermost corners of the world, such as China, Java, the Philippines, and other places, where they had not been in the habit of purchasing sugar, and they could not get it for months after, and it might well be that they purchased that sugar in May, in good faith, proposing to sell it for a cent more, and when the sugar came through months later, the market might be 10 cents higher, or it might have gone down.

Mr. JONES. It is true, with reference to imported sugar, regardless of when it may be imported——

Mr. RILEY (interposing). Most of the imported sugar is raw sugar and goes into the refinery, and you could only make 1 cent.

Mr. JONES. That would be true, regardless of who imported the sugar or when it was imported.

Mr. RILEY. That is true. My point was this, that I would not hold a man who had put millions of dollars into imported sugar to be delivered months later to an absolute compliance with the regulations, which we would put on a wholesale grocer, for instance, in Washington, who knew definitely how much he was paying for his sugar and what his expense was. I retained a little discretion in that matter.

Mr. JONES. Your purpose in furnishing names, or channels through which the sugar could be disposed of, was simply to see that the essential channels might be supplied?

Mr. RILEY. Exactly, and I said if there was any surplus then the others could have it.

Mr. JONES. It was not the purpose on the part of the Government to take over the sugar business, but simply to control the channel through which the necessities would be supplied.

Mr. RILEY. They would receive the first relief.

Mr. JONES. And when they had been supplied then it would be offered for sale to any individuals that might want it?

Mr. RILEY. Exactly.

Mr. KINCHELOE. Did you have any transaction or understanding with one company different from that with the other?

Mr. RILEY. I had nothing to do with the American Trading Co. importations.

Mr. KINCHELOE. You did not handle that at all?

Mr. RILEY. No.

Mr. KINCHELOE. Or with the De Ronde transaction?

Mr. RILEY. Yes.

Mr. KINCHELOE. Was that handled in the same way?

Mr. RILEY. It was not quite, because De Ronde was not represented in the Washington conference. He was not a sugar man. I happened to meet him one day in the Whitehall Club in New York. Knowing him, and knowing he was in the shipping business, it developed that he had a ship, or ships in Argentina, and at the same time this Argentine proposition was up, and at that time I was encouraging everybody to bring sugar in.

Mr. KINCHELOE. And the sugar people were looking for business if there was any profit in it?

Mr. RILEY. But De Ronde was not a sugar man.

Mr. KINCHELOE. How many conferences did you have with De Ronde from the time you first met him until it was over?

Mr. RILEY. I do not know, but it may have been three or four. I met him from time to time down there at the Whitehall Club, which is a luncheon club in New York.

Mr. KINCHELOE. It was the understanding with his firm that he was to receive 1 cent a pound profit?

Mr. RILEY. Yes.

Mr. KINCHELOE. Was there anything said in any of your transactions or conferences with his firm as to whether the Government should sustain a loss, if there was any, or any suggestion of that?

Mr. RILEY. No.

Mr. KINCHELOE. You did not handle the American Trading Co. transaction?

Mr. RILEY. No.

Mr. ASWELL. Did you direct De Ronde's distribution of sugar in any way?

Mr. RILEY. I could not, when the sugar——

Mr. ASWELL (interposing). Did you know when it came?

Mr. RILEY. Yes.

Mr. ASWELL. How did you happen to know about his and not about the others?

Mr. RILEY. Because he consulted with me and the other people did not. De Ronde was not a sugar man. Mr. Lamborn knew a great deal more about sugar than I did.

Mr. KINCHELOE. You said you asked the American Trading Co. for some information which they refused to give you. What was it?

Mr. RILEY. I asked Mr. Franklin to give me the particulars of this deal.

Mr. KINCHELOE. When was that?

Mr. RILEY. It was in May; I should say when I first came to New York.

Mr. MCLAUGHLIN of Michigan. About May 20?

Mr. RILEY. Yes.

Mr. KINCHELOE. What do you mean by the particulars?

Mr. RILEY. I wanted to know how much he paid for the sugar, what his expenses were, to whom he proposed to sell it, and how it was he happened to hook it up with B. H. Howell & Son Co.

Mr. KINCHELOE. What was his answer?

Mr. RILEY. That he was dealing with Mr. Figg, and he did not propose to give me that information.

Mr. KINCHELOE. He then knew that you were the Assistant Attorney General in charge of that very matter?

Mr. RILEY. Yes.

Mr. KINCHELOE. He did not give you any reason why he would not divulge these facts?

Mr. RILEY. No.

Mr. TEN EYCK. Was Mr. Figg your superior in the Department of Justice?

Mr. RILEY. No; at first—I more or less succeeded him—he was merely in charge of the fair-price commissions. The department was attempting to operate through them, and I kept insisting that it was the wrong way to do it, that the results were usually unsatisfactory, and I said the way to get results is to enforce the law; that if it is not a good law you should have it repealed.

Mr. KINCHELOE. Was Mr. Figg still acting as Assistant Attorney General at the time of your conversation with Mr. Franklin?

Mr. RILEY. He was. He was in Washington, and he had been instructed that he was to divorce himself from the sugar situation.

Mr. KINCHELOE. At the time Mr. Franklin refused to divulge the facts that you asked him for, was Mr. Figg in charge of the sugar business, or had you been put in charge of that?

Mr. RILEY. I was in charge with an office in New York, and——

Mr. KINCHELOE (interposing). And Mr. Franklin knew that?

Mr. RILEY. Yes, I told him so.

Mr. TEN EYCK. Did he know that the Attorney General had taken away the authority of Mr. Figg to work with Mr. Franklin?

Mr. RILEY. He did not do that.

Mr. TEN EYCK. He did not take away the authority of Mr. Figg to work with Mr. Franklin?

Mr. RILEY. No; Mr. Figg was acting within his jurisdiction. I had a talk with him, and I had no idea of interfering with that transaction. Mr. Figg knew all about it; he was familiar with all the ramifications of the transaction with the State Department, about which I knew nothing. But I wanted the information because I insisted upon

having reports from every port as to what sugars were received, so that I might trace them and see that they were not resold in the trade on speculation, but that they went in the normal channels to the consumers.

Mr. TEN EYCK. You do not know whether or not the Attorney General had a special arrangement with Mr. Franklin for the purpose of checking up on what the other fellows might be doing? You do not know what was in the Attorney General's mind, as to why he operated with Mr. Franklin the way he did?

Mr. RILEY. The Attorney General told me and Mr. Figg that I had charge of sugar, and he quit there.

Mr. TEN EYCK. You have also just stated that Mr. Figg still had authority to operate with Mr. Franklin?

Mr. RILEY. I did not say he had authority; I said he handled this transaction with Mr. Franklin, and I saw no reason why I should inject myself into that situation, as it then stood.

Mr. KINCHELOE. Your purpose in wanting to get that information from Mr. Franklin was to see that the sugar they were buying was going into legitimate channels?

Mr. RILEY. Yes, sir.

Mr. KINCHELOE. You were carrying out the policy of the Department of Justice?

Mr. RILEY. Yes, sir.

Mr. TEN EYCK. Did you ever ask the Attorney General to have Mr. Franklin tell you what their understanding was?

Mr. RILEY. The Attorney General was not familiar with it.

Mr. TEN EYCK. Did you ever ask Mr. Figg to communicate the understanding to you?

Mr. RILEY. Yes, sir.

Mr. TEN EYCK. What did Mr. Figg say?

Mr. RILEY. Mr. Figg told me what had happened up to that point.

Mr. JONES. Did you ever learn about the American Trading Co., how they and the Howell Co. happened to go together? Did you ever get the information you wanted, which Mr. Franklin would not furnish?

Mr. RILEY. No; I never got it directly.

Mr. JONES. Did you ever get it indirectly?

Mr. RILEY. You mean—I do not know——

Mr. JONES (interposing). Why they wanted to operate together?

Mr. RILEY. I suppose it was so they could each make a cent a pound.

Mr. JONES. That is what I assumed. They each were to make a cent a pound, whereas the other companies were only to make a cent operating individually.

Mr. RILEY. Yes.

Mr. JONES. As a matter of fact, the American Trading Co. and the Howell Co. are owned largely by the same people, are they not?

Mr. RILEY. I do not know.

Mr. JONES. Do you know whether or not the American Trading Co. resold any sugar in the Argentine that they purchased down there?

Mr. RILEY. I do not know; but I will tell you what information I have on that point. I understood—and I got my information from the record—that they purchased approximately 14,000 tons in the Argentine market, and imported that 14,000 tons in this country. I have recently heard from what ordinarily I would consider reliable sources, that they purchased 25,000 tons of Argentine sugar in the Argentine.

Mr. JONES. What did they do with the other 11,000 tons?

Mr. RILEY. That is a question I would like to have answered.

Mr. JONES. It did not arrive in this country?

Mr. RILEY. It did not arrive in this country, and they say they did not resell any Argentine sugar in the Argentine. Of course, they could have sold that in other countries.

Mr. TINCHER. Did they not have a purchasing company down there, and did they not really purchase their sugar that way?

Mr. CLARKE. Mr. Franklin is here; why not ask him?

Mr. TINCHER. If the gentleman from New York knows he has any information, I will withdraw my question. I will not waste any time over it.

I do not know whether there is anything to it, but was there not a company that gathered up the sugar, which was organized by them, and did not that company, as a matter of fact, gather up 25,000 tons of sugar and then resell 11,000 tons of it in the Argentine at a profit?

Mr. RILEY. I do not know.

Mr. TINCHER. Have you heard that?

Mr. RILEY. I heard they purchased 25,000 tons, of which 14,000 tons were shipped to the United States.

Mr. TINCHER. There is nothing in the hearings accounting for what they got, or for the other 11,000 tons, or what profit they made on that?

Mr. RILEY. Not so far as I know.

Mr. ASWELL. Mr. Franklin, is that true?

Mr. FRANKLIN. Is what true?

Mr. ASWELL. Did you buy 25,000 tons?

Mr. FRANKLIN. No, sir. We only bought the amount of sugar that I have previously told this committee about, and no more. We brought into this country all of the sugar we bought in the Argentine.

Mr. KINCHELOE. Are there any other firms that were in the sugar-buying business except the American Trading Co. and the Howell Co. that got 2 cents a pound profit?

Mr. RILEY. Howell and the American Trading Co. did not get 2 cents a pound.

Mr. KINCHELOE. Were to get 2 cents a pound.

Mr. RILEY. Not that I know of. We were attempting to discourage that where we could.

Mr. KINCHELOE. Can you give any other reason why they went in together, except that they would get a double profit?

Mr. RILEY. I have been informed that the American Trading Co. are not familiar with the sugar business and required some experts to distribute the sugar for them.

Mr. KINCHELOE. At the same time they were to get 2 cents a pound, while these other people were to get 1 cent?

Mr. RILEY. I suppose neither was willing to operate for nothing.

Mr. KINCHELOE. It is a fact that they were to get 2 cents, and then there is the further fact that the rest of the people would get only 1 cent?

Mr. RILEY. Yes, Howell and the American Trading Co., the two of them were to get 2 cents.

Mr. KINCHELOE. That is what I am talking about.

Mr. WARD. I think the Attorney General testified that there was a charge of 1 cent for the purchasing, and another cent for the distribution.

Mr. KINCHELOE. Did not the others have purchasers the same as theirs?

Mr. ASWELL. The others bought sugar there, too.

Mr. KINCHELOE. This claimant put these 2,000 tons in this country?

Mr. RILEY. I understand so.

Mr. KINCHELOE. They were to get only 1 cent a pound?

Mr. RILEY. Yes.

Mr. KINCHELOE. They did as much in addition to distribute it in proportion to the amount they handled as the American Trading Co. and Howell?

Mr. RILEY. Yes, proportionately.

Mr. KINCHELOE. And they were to get only half as much profit?

Mr. JONES. Do you know how the American Trading Co. or Howell purchased sugar? Do you know the details of how they purchased sugar in the Argentine?

Mr. RILEY. I do not think I know any more about it than you gentlemen about those transactions. The State Department made the arrangements for the lifting of the embargo.

Mr. KINCHELOE. When you asked Mr. Franklin for this bit of information, you say your purpose was to see that it went into the right channel, and he declined to give it to you, saying that he was doing business with Mr. Figg, and you at that time told him that that function of the Department of Justice had been turned over to you as the Assistant Attorney General, and you were then handling the matter; is that true?

Mr. RILEY. Yes, and it was the only instance in which such information was refused me.

Mr. WARD. If you had the authority, why did you not demand the information?

Mr. RILEY. I could have done so.

Mr. WARD. If you could have, why did you not?

Mr. RILEY. For two reasons. One was that I was in a rather delicate position with relation to Mr. Figg, because at the time he was sort of going out, and I was coming in. He was representing the department, and I did not want to encourage the feeling in the trade that there was any friction in the department. I knew they were dealing with the American Trading Co.——

Mr. WARD (interposing). And the way the situation was left up to you, it would seem to me it would not be very satisfactory to you.

Mr. RILEY. No, it was not so unsatisfactory, because I was asking for information from a man who was dealing with another representative of the Department of Justice, and I did not want to place myself in open conflict with another member of the department.

Mr. WARD. It was partly unsatisfactory because it did, in a way, interfere with the performance of your duties?

Mr. RILEY. It did not give me the information which I felt I was entitled to.

Mr. WARD. I should think you would have gotten it if you were entitled to it.

Mr. RILEY. There was lots of information that I should have gotten that I did not get.

Mr. TEN EYCK. You never took this up with the Attorney General to have the being cleaned up and have Mr. Figg instructed to furnish you this information? That would never have gotten out to the trade?

Mr. RILEY. Mr. Figg gave me all the information he had.

Mr. WARD. Then you had information?

Mr. RILEY. I had all that Mr. Figg had, but not all that the American Trading Co. had.

Mr. WARD. Mr. Figg had all the information concerning the transaction?

Mr. RILEY. I do not know whether he did or not. I do not think he did.

Mr. VOIGT. You could have gotten this information by asking Mr, Figg to get it?

Mr. RILEY. Mr. Figg did not have it.

Mr. KINCHELOE. The information you were trying to get was in regard to the subsequent developments?

Mr. RILEY. Yes.

Mr. VOIGT. You could have gotten further information by asking Mr. Figg to call upon the American Trading Co. for it?

Mr. RILEY. Yes; I could have, but this was the point——

Mr. WARD. (interposing). Then why did you not get it?

Mr. RILEY. Because we were under such pressure that I did not want to aggravate a condition which was delicate.

Mr. VOIGT. I think it was time to put pressure on and let it go.

Mr. PURNELL. We have gone rather far afield, but perhaps we can get some information from this question: As a lawyer would you say that there is anything in connection with this latter transaction—I am talking about the Lamborn claim—that would justify this committee in reaching the conclusion that there is either a legal or a moral obligation, or both, on the part of the Government to reimburse them for any loss they sustained in in handling the 2,000 tons of sugar?

Mr. RILEY. You are saking me to give a conclusion, and as a lawyer I have always felt that is not the thing to do. I would rather give you such facts as I can give you and let you draw your own conclusions.

Mr. PURNELL. I do not regard this hearing as being one calculated to be confined to or to be governed by the ordinary rules of procedure in a court. You realize the position which the members of this committee occupy, and that we must pass upon that very question. There has been a dispute, and is yet, in some quarters at least, as to the legality of this claim.

Mr. RILEY. I have always maintained that in my opinion there was no legal liability to the Government in connection with any of these claims.

Mr. PURNELL. Then what do you say on the question of the moral obligation on the part of the Government growing out of any suggestions or impressions you may have created as a representative of the Government?

Mr. RILEY. I put as much pressure on these men to import sugar as I felt I could rightfully do.

Mr. PURNELL. Would you say that they would not have considered the matter, would not have imported any sugar, if you had not put the pressure on?

Mr. RILEY. I think they would not have.

Mr. PURNELL. Did you do or say anything that would leave the impression in the minds of these men that if they went into this and lost money they might look to the Government for redress?

Mr. RILEY. No.

Mr. PURNELL. Was there anything said by you or them, or any other representative of the Government, touching upon the question of a possible loss?

Mr. RILEY. Not to my knowledge.

Mr. PURNELL. But the question of profit was fixed?

Mr. RILEY. Yes. You see, it looked like such a bull market that anybody who could get sugar out in time would be sure of a profit.

Mr. ASWELL. Did it occur to you there might be a loss?

Mr. RILEY. No. I thought these people would contract for the sugar and sell it immediately, to be delivered upon arrival in this country, and I did not see how there could be any loss.

Mr. PURNELL. That seems to have been the general impression, and the question that the members of this committee must decide is whether or not there is a moral

obligation upon the part of the Government to reimburse these gentlemen who entered into this transaction, largely at your suggestion.

Mr. CLARKE. I understand that this importation of sugar was accompanied by an elaborate program of advertising in the newspapers throughout the country, and as a result of that do you not think that was an inducing cause in breaking the price?

Mr. RILEY. I was going to say that I think our efforts to persuade these people to bring sugar in had a very material effect on the price and on the supply; you might ask how on the supply when there was only a small amount involved. But it released much suagar that was being hoarded throughout the country and threw that on the market.

Mr. CLARKE. Is it a fair conclusion for me to draw from your evidence that, first, you believed that, through the pressure you brought to bear upon all these sugar claimants, these gentlemen went out and bought sugar to import into this country?

Mr. RILEY. That is a fair conclusion.

Mr. CLARKE. And, second, that as a result of this and the advertising that was done the effect upon the American public in general was such as to benefit them through the breaking of the price of sugar; is that a fair conclusion?

Mr. RILEY. I would say they derived enormous benefits, and the amount of money that is involved in these claims is so infinitesimal as compared to the benefits that it is hardly worth mentioning.

Mr. KINCHELOE. You would not want to express a conclusion but you present the facts. You are speaking of the necessity. You did not get the information direct from Mr. Franklin about the transaction with the American Trading Co. But you are so familiar with the transaction in connection with the De Ronde claim and this transaction that I want to ask you this question: Would you say the Government is legally or morally bound, or both, to pay one any more than the other?

Mr. RILEY. No; I do not think so.

Mr. KINCHELOE. Do you think there is any more equity or obligation, or that it is any more incumbent upon the Government to pay one of the claimants than the other?

Mr. RILEY. Not at all.

Mr. VOIGT. You are aware of the fact that De Ronde and the American Trading Co. were prohibited by the American Government from reselling their sugar in the Argentine, are you not?

Mr. RILEY. Yes.

Mr. VOIGT. And the Lamborn Co. got all their sugar out of the Argentine?

Mr. RILEY. Yes.

Mr. VOIGT. There was none down there to resell?

Mr. RILEY. I do not know that.

Mr. VOIGT. That is the fact. Assuming that to be the fact, do you not think there is some stronger equity in favor of the man who was prevented from reselling his sugar in the Argentine and thus not be able to save himself from loss than in favor of the man who had sold his sugar there?

Mr. RILEY. If the other party had acted with the same alacrity with which Lamborn acted, he would have been in the same predicament that Lamborn was in. Mr. Lamborn, I think, was the first to bring it in, and the others who did not bring it in so soon did not bring relief as soon as they did. Yet they may now derive some benefit from this delay.

Mr. VOIGT. Can you say the American Trading Co. and De Ronde did not act with due diligence in accumulating sugar and getting it out of the Argentine?

Mr. RILEY. No; I say they did not act as promptly, because they did not know as much about the business, and they attempted to bring in sugar which would not come under the 30 per cent deposit regulation, while Lamborn bought sugar which, I believe, did come under that regulation. In the one instance you could bring in the sugar immediately if you made the deposit, I understand, of 30 per cent with the Argentine Government. The others waited until that restriction was removed before they imported.

Mr. VOIGT. The Department of Justice and the Department of State undertook to have that restriction removed for De Ronde and for the American Trading Co.?

Mr. ASWELL. Not for De Ronde.

Mr. RILEY. I would say not for either one of them, but for the United States, so people might bring in that quantity of sugar.

Mr. KINCHELOE. But the American Trading Co. did wait to get the advantage of the special permit, while these people brought it in under the general permit?

Mr. RILEY. That is true.

Mr. VOIGT. That special permit having been given, then the Government was justified in not letting them sell the sugar in the Argentine, after having gotten the Argentine Government to remove the restrictions?

Mr. RILEY. Yes, because they got it on account of the necessity existing in this country, and if they sold it there at a profit the Argentine Government might say that there was a conspiracy.

Mr. VOIGT. Is it not true, however, that the American Trading Co. had bought their sugar in the Argentine before this permit was issued but did not get it here until a long time after because——

Mr. RILEY (interposing). I believe the record would indicate that.

Mr. ASWELL. Is not that explained by the fact that Mr. Lamborn is a sugar man and the others are not?

Mr. RILEY. I think all those factors entered into it.

Mr. KINCHELOE. Is there not another factor that enters into it, that they were waiting to get rid of this permit?

Mr. TEN EYCK. In the propaganda which you put out through the country, how much sugar did you give the country the impression there was going to be brought in from the Argentine?

Mr. RILEY. As far as I know, the department did not give any impression of that kind, but the newspapers gave the impression.

Mr. TEN EYCK. What was the amount of sugar that the newspapers gave the impression was going to be brought in here?

Mr. RILEY. That was two years ago, but my recollection is that it was from 70,000 to 100,000 tons.

Mr. TEN EYCK. Where did the newspapers get that information? You do not know where they got that information?

Mr. RILEY. Oh, yes; they got it from the Department of Justice, because, you see, the amount involved was 100,000 tons; I mean the amount involved in connection with this embargo was 100,000 tons. But the amount involved in the actual importation was much less.

Mr. TEN EYCK. Can you tell us how much each of the companies brought in?

Mr. RILEY. You have that in the record.

Mr. TEN EYCK. Approximately, how much do you think they brought in?

Mr. RILEY. You mean among the lot of them?

Mr. TEN EYCK. These three.

Mr. RILEY. I understand the American Trading Co. brought in about 14,000 tons; that Lamborn brought in 2,000 tons; and that De Ronde brought in 5,000 tons. That is my recollection of it.

Mr. TEN EYCK. That is about 21,000 tons altogether.

Mr. GERNERD. Did you solicit Mr. De Ronde or did Mr. De Ronde solicit you?

Mr. RILEY. I met Mr. De Ronde in this club, where I was attending a coal conference, and it developed in the conversation that he had a ship in the Argentine, and, as I recall, we then discussed the bringing of sugar into this country, and apparently it had not occurred to him before. But, of course, I wanted them all to bring in sugar, and the quicker the better, and I urged him to do it.

The CHAIRMAN. How much of the 100,000 tons were imported?

Mr. RILEY. As far as we have any record of it, it was 21,000 tons.

The CHAIRMAN. All told?

Mr. RILEY. That is what the record shows.

The CHAIRMAN. That is, the record before this committee?

Mr. RILEY. Yes.

The CHAIRMAN. Have you any knowledge of the amount imported?

Mr. RILEY. No, sir; I have not.

The CHAIRMAN. Can you estimate the number of claims which are likely to be filed, in addition to those that have been filed?

Mr. RILEY. I have heard of only one other.

The CHAIRMAN. What is that?

Mr. RILEY. The Watson claim.

The CHAIRMAN. Have you any knowledge of any others?

Mr. RILEY. I have no knowledge of any others; that is, I can not recall any.

The CHAIRMAN. If we had a report on the amount imported we could estimate the number of claims which are likely to be presented.

Mr. LAMBORN. The Department of Justice and the customs office in New York can give you all of them. I think there were several cargoes that were brought in by people who had been gamblers in the market, and when the sugar came and the market went down they repudiated their contracts and left it in the hands of the banks.

The CHAIRMAN. Did the banks file claims?

Mr. LAMBORN. The banks gave the credit and then these people repudiated their contracts.

Mr. CLARKE. Is this claim you referred to a moment ago apparently a small claim?

Mr. RILEY. I think so, because I understand he was not a man of large means, and I did not know he brought in any, although I had negotiations with him and understood he contemplated doing it, but that he actually brought in any I never knew.

The CHAIRMAN. Do you know of anyone connected with the department who claims that the people who brought in the sugar had a guarantee against the loss?

Mr. RILEY. Absolutely not. I am talking about my own position at that time. I did not feel that we had any right to do that.

The CHAIRMAN. You have no knowledge of anybody obligating the Government in the matter of loss?

Mr. RILEY. Other than as you say.

The CHAIRMAN. Other than as you say—that is, to give encouragement, and that same encouragement was given to everybody, whether in connection with sugar or anything else. The slogan was to produce food, was it not?

Mr. RILEY. We did more than that. We were working a great deal closer.

The CHAIRMAN. You were urging every farmer to grow grain.

Mr. RILEY. I was not in this country during that campaign of the Food Administration, so I have no personal knowledge of what was done at that time. I was in the Army at that time.

The CHAIRMAN. The question, I take it, for the committee to determine is whether or not there is any liability, either legal or moral.

Mr. RILEY. I say—as to what had been done in the way of general encouragement—I do not know what was done. But I do know what was done in these particular cases.

Mr. MCLAUGHLIN of Michigan. When did your service in the department begin and when did it end?

Mr. RILEY. It ended——

Mr. MCLAUGHLIN of Michigan (interposing). No; when did it begin?

Mr. RILEY. I think it was in December—it ended on March 3, 1921; I think I was with the Department of Justice about a year and a half. I think it began about December of 1919. I should know these things, but I do not remember. It was about a year and a half prior to March 3, 1921.

Mr. TEN EYCK. That would put the beginning about September or October, 1919.

Mr. HUNT. Did not Lamborn & Co. and other importers file with you a complete statement showing the importations they were going to make, that they had contracted for, and keep those statements up to date from time to time, and did you not require that of all the importers?

Mr. RILEY. Yes; not that which they contemplated making, but which they had contracted for or actually brought in.

Mr. HUNT. That was kept up to date during your term in office?

Mr. RILEY. Yes; and that was the purpose of my request made to the American Trading Co.

Mr. HUNT. You have stated that you did not know directly of this importation, but this importation was included, undoubtedly, in the documents filed with you under your rule at the time, although it might not have been called to your attention directly at the time.

Mr. RILEY. It was within the knowledge of my office.

Mr. KINCHELOE. Did they all do that except the American Trading Co.?

Mr. RILEY. Yes; where I requested it. The United States Customs Service was making similar reports.

Mr. TEN EYCK. Do you know of any correspondence which the Attorney General's office had with the Argentine Government through the office of the Secretary of State in behalf of any one of the sugar companies?

Mr. RILEY. Only as it appears in the record.

Mr. TEN EYCK. You did not know anything at that time about any special correspondence?

Mr. RILEY. No—at which time?

Mr. TEN EYCK. At any time.

Mr. RILEY. Yes; because Mr. Figg told me, up to a certain point, what had been done.

Mr. TEN EYCK. Do you know that there was no correspondence in relation to Mr. Lamborn's claim?

Mr. RILEY. I did not know of any correspondence.

Mr. LAMBORN. May I ask a few questions? I will state that we had no correspondence whatsoever, and my testimony relating to that matter in connection with the Department of Justice is in the record.

Mr. Riley, were you present at that meeting at the Department of Justice on May 21?

Mr. RILEY. Yes.

Mr. LAMBORN. Did you hear my testimony on yesterday?

Mr. RILEY. Yes.

Mr. LAMBORN. Did I state substantially at that time what was said at the meeting and the effect of the meeting and the result of the meeting?

Mr. RILEY. I think you did.

Mr. LAMBORN. Did you subsequently meet the importers' committee, selected by themselves at the request of the Attorney General, which he then appointed, at your office in New York in the following week?

Mr. RILEY. Yes.

Mr. LAMBORN. And frequently?

Mr. RILEY. Constantly.

Mr. LAMBORN. Did you keep in touch with our office?

Mr. RILEY. Yes.

Mr. LAMBORN. Did we extend to you and to the department every possible courtesy by trying to aid you in handling this sugar?

Mr. RILEY. Yes; you did.

The CHAIRMAN. It is after 12 o'clock. How much more time will you need, Mr. Riley?

Mr. RILEY. There is just one thing I would like to refer to, and that is the question in regard to the written record. I notice that Mr. Glasgow made a great point of that. I believe he does not recognize any claim as having any merit unless it is in writing. That requirement happens to conform to the one claim he seems to be interested in, although he disclaims that interest. I have not been able to attend these hearings and hear what the witnesses have said, but I do not like the different aspersions and remarks he has made about my conduct with these people, because it is not in writing. But if a Senator, a Member of the United States Senate, saw fit to take my verbal word as to what prices should be charged for American beet sugar, as Senator Smoot has done, I think there is not any need for any comment on the fact that no written record exists in connection with the other transactions.

I feel rather strongly on that, because Judge Glasgow has from time to time given the impression that he is acting solely as the representative of the United States Government and has no other interest. I may say that never have I received a nickel in any way from any source while I was in the Government service other than from the United States paymaster, but what I do know is that Judge Glasgow has received fees from time to time, some of them of tens of thousands of dollars, and that he was at that time acting on behalf of some of the alleged violators of the Lever Act, and that strikes me as being something that Judge Glasgow can answer.

Mr. ASWELL. Is he employed now by the American Trading Co.?

Mr. RILEY. I do not know. But I do know he was operating under the United States Equalization Board, which is a corporation organized under the Lever Act, and at the same time he attacked the constitutionality of the Lever Act successfully, so running with the hares and next hunting with the hounds.

Mr. ASWELL. Is he drawing a salary as a member of the Sugar Equalization Board?

Mr. RILEY. He says he is still representing them, but over two years ago I was informed by various representatives of the Equalization Board that they were no longer functioning, and when different things would arise which I felt should be referred to the Equalization Board they would say, "Take this into your own department. We are through; we are winding up our business." I do not know that the embarrassment the administration received at that time was an altogether unadulterated sorrow to Mr. Glasgow.

Mr. ASWELL. I was wondering if Mr. Glasgow does anything else than write the chairman of this committee.

Mr. RILEY. I do not know. I have seen a letter recently which reflects on me, and I noted his attitude toward me when I was down here once before.

He says that he has no claim, that he is not interested in any claim. But if you will refer to page 29 of the hearings before this committee in January, 1921, you will see what he thinks of the claim. He says: "The unanimous opinion of the board was that by reason of the falling down on the part of the State Department and of the Department of Justice in this transaction these gentlemen (the American Trading Co.) have been very hardly dealt with in having to assume this loss, and the board unanimously felt that as between man and man in a transaction of this kind the equities were all with these gentlemen to be saved from this loss if it could properly

be done. And if you gentlemen determine, or Congress determines, that the equities and rights between them are as I suggest and direct the Sugar Board to take over the transaction, we will take it over and we will work it out at the least loss we can and we will stand the loss instead of having these gentlemen bear it, which under the circumstances the board thought would be very inequitable and very harsh."

The CHAIRMAN. Reference has been made to correspondence between the chairman and Mr. Glasgow. This committee keeps a record of requests to be notified of hearings. The letters from Mr. Glasgow referred to have been requests for printed reports of hearings and in acknowledgement to notices of meetings sent out. Mr. Glasgow and everybody else asking to be were notified of hearings.

Mr. WARD. Sent to Mr. Glasgow, and the letters are published.

Mr. TINCHER. He takes occasion in those letters to give a lot of his views, which nobody is asking for, and I will state if these bills pass it is due this administration to have a settlement with that gentleman in view of the testimony he has given and the statement that this gentleman makes, that he is part of the time with the hares and part of the time with the hounds.

Mr. RILEY. He also says on page 32 of the same hearing, "I am not talking about whether there are other people that are hurt through the country or not—these gentlemen have been dealt with very badly, and if it was a transaction between man and man I would feel that I would not do right to leave another fellow with the bag to hold." He feels that this is the only company that holds the bag.

Mr. MCLAUGHLIN of Michigan. He is expressing an opinion, and if it is not borne out by the facts and information we can not do anything.

Mr. TINCHER. What was the occasion on which he attacked the Federal law?

Mr. RILEY. The Lever Act.

Mr. TINCHER. Do you remember the title of the case?

Mr. RILEY. No; it was some Philadelphia case, a case in Pennsylvania.

Mr. TINCHER. Do you know whether it was finally heard in the Supreme Court of the United States?

Mr. RILEY. The Lever Act was litigated in the Supreme Court of the United States. Whether or not Mr. Glasgow submitted a brief I am not certain, but I have been so informed, that he submitted a brief attacking the constitutionality of the act.

Mr. TEN EYCK. I want to make a statement as a member of this committee. I want to say that as to every witness who comes before us, as far as I am concerned, I am going to weigh his testimony in an unbiased way. I am going to take what Mr. Riley says to-day in relation to this claim and all other claims and weigh it in my own mind, and give it such value as I consider it to be worth, and I am going to take Mr. Glasgow's testimony and weigh it in my own mind, honestly, and I am going to take every other man's testimony given here and weigh it. As far as the fight between these people themselves is concerned, I do not care a bit in relation to that, but I think it is the duty of the committee to weigh the testimony and look at each individual witness and decide for themselves what they should do in relation to this important subject.

Mr. LAMBORN. Mr. Chairman, yesterday some gentleman—I think it was the gentleman at your right—offered some letters, apparently from Judge Glasgow. I do not know whether they were embodied in the record or not. I do not know whether a motion was made that they should be made part of the record. If they referred to our claim, are we entitled to a copy of those letters, so that we may see them? We would like to see them.

The CHAIRMAN. Are they to be incorporated in the record?

Mr. SINCLAIR. Do they refer to this claim?

The CHAIRMAN. They refer to this and other claims. What is the pleasure of the committee?

Mr. CLARKE. I move that they be put in the record.

(The motion was adopted.)

(The letters referred to are as follows:)

PHILADELPHIA, *February 23, 1922.*

Hon. GILBERT N. HAUGEN,
Chairman Committee on Agriculture, House of Representatives,
Washington, D. C.

MY DEAR MR. HAUGEN: You will probably recall me as counsel for and a member of the United States Sugar Equalization Board. I am particularly interested in the action that may be taken by Congress with reference to the claims of the American Trading Co., De Ronde, and Watson for reimbursement of losses in connection with the purchase of sugar in Argentina. I examined carefully, as I told you on one occasion, the claim of the American Trading Co., and came to the conclusion that it was a just claim. I reached exactly a different opinion as to the De Ronde claim, and as to the *Watson claim* I have no information at all. I am not willing for the money of the

United States Equalization Board, which belongs to the Treasury of the United States, to be distributed on claims of this kind unless there is some record evidence tending to show the equity of the situation.

I am very anxious, therefore, to have a complete record of all that took place in your committee as to each of these claims and the report of the committee and any minority report which may have been made. Would it be asking too much to have the secretary of the committee forward to me a complete record as to these claims?

Believe me,

Very truly,

WM. A. GLASGOW, Jr.

PHILADELPHIA, *March 18, 1922.*

G. N. HAUGEN, Esq.,
Chairman Committee on Agriculture,
House of Representatives, Washington, D. C.

MY DEAR MR. HAUGEN: I have your letter of March 10, 1922, inclosing me House resolution No. 284, as to the sugar board's assuming the losses on Lamborn & Co., and stating that a hearing had been asked for before your committee. Of course, the sugar board will desire to have notice of any such hearing, as there is no record evidence anywhere of any liability to Lamborn & Co., and the same was true as to the de Ronde claim.

I am very much troubled at these claims being pressed against the treasury of the sugar board, the money in which belongs to the Treasury of the United States for the benefit of the Government. The board went as far as it could in recognizing an equitable claim on the part of the American Trading Co., where there was a record in writing, and personally I feel that the Treasury ought to be protected against claims as remote as the evidence showed the de Ronde claim to be. I can not understand how there could have been a unanimous report in favor of the de Ronde claim, where there was no record, and a minority report as to the American Trading Co., which was a claim based upon the records of the State Department and the Department of Justice.

Believe me, very truly,

WM. A. GLASGOW, Jr.

PHILADELPHIA, *April 13, 1922.*

Hon. GILBERT N. HAUGEN,
Chairman Committee on Agriculture, House of Representatives,
Washington, D. C.,

MY DEAR MR. HAUGEN: I have your letter of April 11, 1922, notifying me of the hearing before the committee on H. J. Res. 284, being the claim of Lamborn & Co., to be reimbursed for losses sustained on Argentine sugar, and further stating that this hearing would be had on Monday, April 17, 1922, at 10 o'clock a. m.

I regret that my engagements are such that I will be unable to appear.

As I understand the situation, there are, and have been claims made by four parties to be reimbursed for losses on importation of Argentine sugar in the year 1922. The only one of these claims as to which there is any record evidence in the departments at Washington or elsewhere, so far as I know, is the claim of the American Trading Co., and while the United States Sugar Equalization Board felt beyond doubt that there was no claim against it by anybody, it did feel, in view of the record evidence, that there was an equitable claim on behalf of this company against the United States.

The board, however, is absolutely opposed to any action which might look to the fund under its control being diverted from the Treasury of the United States to the payment of any claim, unless there is record evidence establishing an agency of the claimant on behalf of the United States, and the board feels that it is its duty, so far as proper, to protect funds under its control for the benefit of the Treasury of the United States.

The claims covered by the four resolutions which have been pending in Congress, it is estimated by the board if paid out of its Treasury, would take approximately $7,000,000 or more of money which belongs to the United States as the only stockholder of the United States Sugar Equalization Board (Inc.).

I regret that I will be unable to attend the hearings, but I have stated above, as nearly as I can, and with accuracy, as I understand it, the feeling of the members of the United States Sugar Equalization Board.

Believe me with great respect,

Very truly,

WM. A. GLASGOW, Jr.

Mr. RILEY. I would like to state, Mr. Chairman, that I have no quarrel with Mr. Glasgow. I have seen him once, but I have had reactions from his activities which I did not understand, and for that reason I took this opportunity, which is the only opportunity I have had of placing myself right with the committee.

Mr. WARD. I want to move, Mr. Chairman, that the Committee on Agriculture request the Committee on Rules of the House to report a special rule for the consideration of S. J. Res. 12 at the earliest possible date.

Mr. CLARKE. I think you ought to include No. 79.

Mr. TINCHER. I want to be heard on that motion.

Mr. VOIGT. I want to make a motion also in regard to the milk bill. I move that we adjourn until 10 o'clock to-morrow morning.

Mr. TINCHER. I have an engagement to-morrow morning with the Senators from my State; can you make it Thursday morning?

Mr. VOIGT. I do not care. I will make it Thursday morning at 10 o'clock.

Mr. WARD. Why not have it to-morrow morning? I want to be away on Thursday.

Mr. VOIGT. I will amend my motion and make it Thursday morning at 10 o'clock.

(The motion was agreed to).

(Thereupon, the committee adjourned to meet Thursday, April 20, 1922, at 10 o'clock a. m.)

FOREST LANDS FOR EX-SERVICE MEN

HEARINGS

BEFORE THE

COMMITTEE ON AGRICULTURE

U.S. Congress

HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS

SECOND SESSION

APRIL 18, 1922

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COMMITTEE ON AGRICULTURE.

HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS, SECOND SESSION.

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FOREST LANDS FOR EX-SERVICE MEN.

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Tuesday, April 18, 1922.

The committee met at 10 o'clock a. m., Hon. Gilbert N. Haugen (chairman) presiding.

There were present: Mr. Haugen, Mr. McLaughlin of Michigan, Mr. Ward, Mr. Purnell, Mr. Voigt, Mr. McLaughlin of Nebraska, Mr. Tincher, Mr. Sinclair, Mr. Thompson, Mr. Gernerd, Mr. Clague, Mr. Clarke, Mr. Jacoway, Mr. Aswell, Mr. Kincheloe, Mr. Jones, and Mr. Ten Eyck.

The CHAIRMAN. Mrs. Boggs, we will be pleased to hear you this morning.

STATEMENT OF MRS. L. H. BOGGS, THE ROCKINGHAM, WASHINGTON, D. C.

Mrs. BOGGS. Mr. Chairman and gentlemen, I have come again to make an appeal to see if something can not be done for these boys who are not employed and who are seeking employment and really just resorting to all kinds of terrible things that we are seeing in the papers. A great many of them I have come in personal touch with. I will just cite one or two instances, this Powell shooting affair over here Saturday and Doctor Bryson, and several others that have recently come to my notice. It is all due to lack of employment.

They are here not knowing, a great many of them, how to get their compensation. Some of them really do not need compensation, and there are others who were not wounded but who are needing employment, and they are being driven to these desperate deeds which they are committing. After working on the proposition for quite a while and talking with these boys, I find that the Government has quite a good deal of ground, and I have brought with me this morning this map. I would like any suggestion from any of you gentlemen as to any other ground available. I merely submit this map because this is the only one I have, and it seems to me that as long as you have a great deal of this ground idle, if some means could be used to put these boys on this ground, say with a 90-year lease, and, if they have no money, build them houses, at probably from $1,200 to $1,500, and allow them to pay 5 per cent on the cost of that house until it is paid for, that would insure them a home for the rest of their lives and encourage them in agricultural pursuits. The longer this is put off the harder it is going to be to get them down to work and the greater the crime wave is going to be. I am personally in touch with a great many of these boys and they have become so embittered against the Veterans' Bureau, against the Government, and against almost everybody, even the members of their families. You will find numbers of these men around Washington and all out through the country who are really not normal. They appear to be. This is due to the condition that they suffered from in the war and what they have been through, and it is growing constantly.

When they come in your presence they appear to be all right, but as soon as you get right down to business facts with them, they are not there. They are just nervous wrecks; they do not seem to be able to concentrate; they do not seem to be able to accomplish anything; in other words, some of them are really more like children. They must be led and they must be taught in a kind, gentle way. That is the condition I find a great many of them in. Therefore, I have come to ask you gentlemen if you can work out any way by which this situation may be handled, because the crime wave is going to increase

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unless we do something, and it seemed to me that this was the easiest thing that could be done at this time, and it is what they need—work—ahead of everything else. If you could get them to realize that their interest was in this ground, whether they were raising poultry or following agriculture or horticulture, or some other pursuit, it would be a great help to them, because that is what they are suffering from, and that is what they are needing.

The CHAIRMAN. What land did you have in mind? What tract do you have on the map?

Mrs. BOGGS. This map was brought to me recently by an old gentleman who said this ground belonged to the Government.

Mr. ASWELL. Where is it located?

Mrs. BOGGS. It is in the mountains overlooking Bedford City. Now, you may have a great deal of other ground which is good, but I only knew of this ground, and that is why I brought this map.

Mr. TINCHER. Is it a national forest?

Mrs. BOGGS. It belongs to the Forestry Service. There are two men on that ground now that possibly the forester may not know about. They are living in stone houses and the stone was dug out of the mountains and the houses built with it.

Mr. ASWELL. How would you get the boys to go out there? You could not compel them to go.

Mrs. BOGGS. I find that a great many of them do not have to be compelled. If you can make them believe you are interested in them, and that it is nothing to you, but you are simply trying to help them to locate and become good citizens——

Mr. ASWELL (interposing). The bonus bill carries a provision of that kind as it passed the House.

Mrs. BOGGS. What plan is that?

Mr. ASWELL. A plan for home ownership.

Mrs. BOGGS. It does?

Mr. ASWELL. It is not with reference to any Government lands, but it provides a plan to aid the soldiers to have homes.

Mrs. BOGGS. Along this line, Mr. Aswell?

Mr. ASWELL. Yes; not on Government land, but it enables them to purchase a home. That was in the bill that passed the House, and of course I do not know what will happen to it in the Senate.

Mr. TINCHER. Under existing law they have the preference on all Government land. This is just a map of a national forest in the State of Virginia.

Mrs. BOGGS. Yes; that is the only one I have, and it seemed to me it could be worked out in any State where the Government had a great deal of waste ground. I know there is a great deal of waste ground over here in Virginia, because I happen to come from that State, and I suppose that is why I know really more about the ground in Virginia. I am not asking that it be put in any special spot, but wherever you gentlemen see fit to locate these boys. It is for the benefit of these boys I am making this appeal. I have talked with numbers of them, and the reply is, "How can we start a home when we have no money to build a house or to buy ground?"

Mr. TINCHER. How many of these boys do you anticipate there are in the United States?

Mrs. BOGGS. Who would go to a place like this?

Mr. TINCHER. Yes.

Mrs. BOGGS. That would be hard to tell at this time. I could not possibly answer that question right off.

Mr. TINCHER. You have based your judgment in this matter on your experience with the boys here in the District of Columbia?

Mrs. BOGGS. Yes; but the boys come here from all over the United States. They are here from every State, pretty much, in the Union, not only the near-by States but everywhere, and that is the condition I find among them, great dissatisfaction and unrest.

Mr. TINCHER. What cases were those that you cited as examples; was one of them a doctor?

Mrs. BOGGS. Yes; Doctor Bryson.

Mr. TINCHER. Is that the doctor who shot his wife?

Mrs. BOGGS. Yes; and the other man was named Wood, who shot Miss Powell last Saturday.

Mr. TINCHER. Doctor Bryson had plenty of finances, did he not?

Mrs. BOGGS. Yes; but it was a nerve condition, and that nerve condition exists among so many of them. Quite a number of them might come in this room and apparently would be all right, and they might sit here and talk with you for probably half an hour, but if you got right down to business with them and said, "Now, boys, let's do so and so," or "Do you want to do so and so," you would be perfectly amazed to see their mental condition.

Mr. TINCHER. Of course, in a great many localities of the country, and especially in the rural districts, the former service man has done real well and has gone back to work and is a highly respected citizen in his own community.

Mrs. BOGGS. Yes.

Mr. TINCHER. And others who were injured or deranged during the war are being taken care of by the Government. I expect that your experience here in Washington would cause you to meet more of the class who come here to try to get something from the Veterans' Bureau or the war-risk people than anywhere else in the country.

Mrs. BOGGS. Yes; and also looking for work, with nothing behind them at home, don't you see?

Mr. TINCHER. I should think that this would be the last place that a man with a well-balanced mind would come to get work.

Mrs. BOGGS. You would think so, but they seem to have the idea that because this is the seat of Government all they have to do is to come here and they can get anything they want, and then they get here and get stranded. The Lest-we-forget Club has been doing a wonderful work among these men. Probably you know of the Lest-we-forget Club. The Knights of Columbus have also been doing a great deal, and the Carry-on Club also. Those clubs are all doing good work, but in a small way, and they are only relieving the situation temporarily.

Mr. TINCHER. Of course, as far as the Government land in the United States is concerned, the soldier now has the preference. If he wants to file on any Government land he has a preference by reason of his service.

Mrs. BOGGS. Yes.

Mr. TINCHER. And most of these national forests are not adapted to making a home. It was not supposed to be land that they could make homes in and eventually become prosperous.

Mrs. BOGGS. I want to tell you about two cases on this very plat of ground. One man was sent out West supposed to have an active case of T. B. The doctors told him he had about two weeks to live. After he had been there some little time he thought he had better go home, and he came back home and is now located on this tract of ground in a little hut built out of rocks taken from the mountains and has his truck patch, and he sells his surplus down in the village. He is the picture of health. Another is the case of a man who had asthma and hay fever, chronic, and he has been entirely restored. Those two cases are living up on this mountain now. I do not know whether they had a right to settle there or not, but they are there.

Mr. ASWELL. You said a little while ago that lack of employment among the former service men is the cause of the crime wave, and mentioned the Bryson case. I understood that he had a lucrative country practice.

Mrs. BOGGS. I think he had practiced, and when I cited his case I cited it to show the mental condition. Apparently he appeared all right, even to his patients and everybody else, but yet you see what he did.

Mr. ASWELL. That was not on account of lack of employment.

Mrs. BOGGS. No; not in his case, but apparently he appeared all right, and a great many of them appear all right, but when something comes up and they get worried or distressed then they commit some terrible crime. On the other hand, it seems that there are those who would make that an excuse for doing these terrible things that are being done.

Now I will give you an instance that came to me last week. A gentleman came here who I had never seen before, and he said that in his home town there was a splendid young fellow who, when he went to war, was the picture of health. He had come back and could not get his compensation, although his papers were here in the Veterans' Bureau. He had been to several places and had been examined by different physicians, and they had told him he had T. B. This commander of the post said. "He is now ill in bed. We have reason to believe that his wife, his mother, his child, and himself have no food. We can not offer him money, because they are very proud people. We have made up a purse of $100, and we do not know what to do with it." I said, "Well, why did you come to me, because I never heard of you before?" He

said that some soldier had told him. So we talked the situation over and decided that he would give me the check for $100, and I would send my check for $100 to the commander of the post in this town to make sure that this boy would get it, and then he would take it down to the home and give it to him. So I did that, and after I had made out the check I said to this commander, "I can not conscientiously take the credit of sending this money to this man and his family, because I am not sending it. I will send it if you will let me send it from the Soldiers' Institute, because I do not want to take the credit to myself. Otherwise I am taking away what belongs to some one else." He said, "If you can get the money to them and relieve this distressing condition, it does not make any difference how you do it." So I mailed the check to this boy, and yesterday I had a letter from him written, I imagine, by his wife. It was the most pathetic letter you have ever read in your life. It would really make you almost weep to read it, in which they sent the most grateful thanks for this money and stated that it had come at a time when they needed it most, and their condition was pitiable, and so on.

Mr. ASWELL. He is entitled to compensation, is he not?

Mrs. BOGGS. Yes.

Mr. ASWELL. Why does he not get it?

Mrs. BOGGS. Because, as the boys say, he has no social or political pull, as they express it, and his papers are lying over in the bureau, and they were too proud to——

Mr. ASWELL (interposing). Does he live in Virginia?

Mrs. BOGGS. Yes, sir.

Mr. ASWELL. Who is his Congressman; do you know?

Mrs. BOGGS. Yes; I would know; but I would not want to say, because they are very proud people and I would not want any of this to get back to the family, because it would really hurt them to think that I had come here and spoken of this; but that is one of the cases that came to me a few days ago. There this boy was, lying there dying of T. B., with absolutely nothing.

Mr. KINCHELOE. Did he have in an application to the Veterans' Bureau?

Mrs. BOGGS. Yes; and his has been there weeks and weeks.

Mr. KINCHELOE. My experience has been that it takes more than an ordinary Congressman to get anything out of the bureau. I think it is the rottenest thing in the Government right now—the Veterans' Bureau.

Mrs. BOGGS. Well, I will say that I can not understand——

Mr. ASWELL (interposing). Probably if you should go over to the bureau and recite that story to them, they would put it through for you.

Mrs. BOGGS. Oh, I have been to the bureau and cited stories to them until I am just tired. I have just almost given out. I would really rather take the last dollar out of my pocket and give it to a boy than have to go over there and contend about it. You just get weary of telling the same old story and going after them. Now, I do think there are some splendid men in the Veterans' Bureau, and I know two or three of them, but their hands in a way are tied; don't you understand?

Mr. KINCHELOE. To make myself clear, Mrs. Boggs, of course, on the question of the Veterans' Bureau passing on the merits or the demerits of a claim, I have no criticism to make of them, because I know nothing about that, but here is what they do that is a malicious thing: A soldier will be drawing compensation right along and suddenly it stops. I have several cases of that kind. He writes me and I take it up with them and they say that it is the opinion of the bureau that his disability is not as much as 10 per cent any longer. You write back to that soldier and you find that he has never been examined except the first time when he got his compensation, and yet they have cut it off without any examination at all and know nothing more about his condition than I do.

Mrs. BOGGS. Of course, they do.

Mr. KINCHELOE. That is the malicious practice I am complaining about.

Mr. TINCHER. I had a case where I accused them of doing that and they denied it emphatically that they cut off any compensation without an examination by their medical examiner.

Mr. KINCHELOE. I have some cases where I have got them nailed on that proposition.

Mr. SINCLAIR. I have, too, and there are hundreds of cases like that.

Mr. KINCHELOE. This boy wrote to me and I have not only this case, but several, and said, "I was never examined but once in my life, and that was in October, 1921, when I got my compensation," and I wrote to them and asked

them to tell me when he was reexamined or how they knew he had a disability of less than 10 per cent, and they do not answer that at all.

Mr. ASWELL. Mrs. Boggs, have you any suggestion as to what ought to be done with the Veterans' Bureau?

Mrs. BOGGS. Probably I had better not make my suggestion.

Mr. ASWELL. Let us have your suggestion about it, because all of us have had experiences similar to yours.

Mrs. BOGGS. I would have a general shakeup and a general housecleaning.

Mr. ASWELL. By congressional action?

Mrs. BOGGS. I certainly would. I would have a general housecleaning. I want to make myself clear here. I do not want to be misunderstood by any of you gentlemen. I have been working, I think as you know, among these boys and recently several things have come up that I did not quite understand. A great many of my relatives and friends are Republicans. I was born a Democrat. I want to be honest and clear with you. I am a Democrat. I was born one, but I am sure I am an honest, clean one. I have always stood for the best man, no matter what his politics is, when he is running, even before I had a vote. When my husband would be going to the polls, we would discuss the candidates, and I always said to him, "Support Mr. So and So," and he would laughingly say, "Why, he is the biggest Republican in the State," and I would say, "You happen to have this time a dirty Democrat opposing him; support the other man or do not come home this evening." That has been my theory all along.

Mr. TINCHER. You mean that before suffrage you only had one vote, and now you have two votes?

Mrs. BOGGS. Yes; or several now. That has been my theory, always to support the best man, even before I had a vote, no matter what his politics was. Since I have been in this work for the boys I have never let politics or religion influence me at all. I have been in it in an absolutely conscientious, clean way. The other day I was accused in the presence of several of my Republican friends by a boy who was really, I think, far from being normal, and he made this remark when we were discussing this camp we are trying to help them with. He said, "There is too much politics in this, Mrs. Boggs." I said, "I do not think there is any politics in it, except we have some very splendid men and women. The majority of our people are Republicans." He said, "There is too much politics, too much politics, and I am sure that you are from Virginia, are you not?" I said, "Yes; I am from Virginia, and I am a Democrat, but I am a clean Democrat, sir, I want you to understand." He said, "Well, I am not for the camp because there is too much politics in it." Then I said, "We are going to have the camp, politics or no politics, and when you are sick and want to rest, come down and we will restore you mentally and physically, but I want to say to you also, young man, that any man or woman who would use this means, the sick soldiers, to further their politics or their religion, I could see him shot before sunrise, and do not forget it." So he left. Now, that is the situation, and I want you to understand my position exactly. I am not in any way, shape, or form upholding anybody politically or religiously.

Mr. TINCHER. I do not think there has ever been a time when any member of Congress has taken the trouble to find out the politics of a single soldier boy.

Mr. ASWELL. I do not think so, either.

Mrs. BOGGS. That is exactly what I believe firmly, and I said at this meeting that I came in contact with the men on this hill and I had never asked their politics because I was perfectly indifferent about it, but I have found every man that I have come in contact with on this hill, regardless of what his politics or religion may be, most wonderful in wanting to help. You have proven that. Look at the money you have appropriated.

Mr. ASWELL. What can we do to get action in the Veterans' Bureau? I am more interested in that than I am in your camp.

Mrs. BOGGS. That would not be for me to say, but it seems to me that if you had a wonderful man at the head of it——

Mr. ASWELL. I thought maybe you could offer some suggestion.

Mrs. BOGGS. I would suggest that there be a little change. I think sometimes we need a shake-up and a change all around. I think the boys on the outside would feel better and the men on the hill would be able to get quick action.

Mr. ASWELL. These men, generally, have been put there by the American Legion.

Mrs. BOGGS. Why should the American Legion undertake to run the Veterans' Bureau?

Mr. TINCHER. The Veterans' Bureau has always been more or less under attack and the first man at the head of it was from Missouri and was a Democrat. What was his name?

Mrs. BOGGS. Lamkin.

Mr. TINCHER. Yes.

Mrs. BOGGS. He was a wonderful man.

Mr. TINCHER. I was never treated nicer by any man, and so far as he was concerned personally I thought he always did everything that he could. He was succeeded by——

Mrs. BOGGS. He was succeeded by Colonel Cholmeley-Jones, and Colonel Cholmeley-Jones was one of the most able and splendid men I have ever met in my life.

Mr. TINCHER. I never had any fault to find with Jones.

Mr. KINCHELOE. I think he was the best man we ever had there.

Mrs. BOGGS. He was a Republican, but he was a splendid man.

Mr. KINCHELOE. I never knew what his politics was.

Mrs. BOGGS. He was a Republican, but a wonderful man.

Mr. TINCHER. I want to say that so far as the man who is there now is concerned in the matters I have taken up with him, and I have taken up with him anything any soldier from my district or any other district has asked me to take up, I have always thought he handled very satisfactorily. I have had no trouble about getting action from the Veterans' Bureau, and there certainly can not be any question about their functioning except the question of ability.

Mrs. BOGGS. That is just it.

Mr. TINCHER. Because no one expects them to be partial.

Mr. KINCHELOE. I do not mean to say that they have been discourteous or negligent in my correspondence or association with them, but I am talking about how they cut off the compensation from these boys and they do not know a thing on earth about it.

Mr. TINCHER. Of course, I am afraid Congress has made one awful mistake, and they made that mistake at the suggestion of the American Legion, when we decentralized the Veterans' Bureau, and of course we did that at the instance of the soldiers.

Mrs. BOGGS. You did that in good faith, and you were trying to relieve the situation. You see this is a stupendous thing that came upon us almost, you might say, overnight. It was all new to all of us. We have worked hard, night and day, and we have done conscientiously what we thought best, but when we make mistakes, as all of us do, the only thing we can do is to try to readjust things. I am not here to criticize or knock anyone, but I do think that if there could be some few changes, things probably would take a different turn. You know that when you get into a rut and everybody is complaining, you can not get much satisfaction.

Mr. TEN EYCK. In other words, you feel that there is a lot of detailed work that might be improved upon if some master mind could grapple with it and improve upon it?

Mrs. BOGGS. Yes; and you need a master mind to do it. You need a man of the greatest executive ability, and you need a man of good physical strength. That office killed Colonel Cholmeley-Jones. There is no doubt but what his death was the result of hard work there. It is a stupendous undertaking and needs a master mind.

Mr. TINCHER. And it takes a lot of cooperation.

Mrs. BOGGS. Absolutely.

Mr. TINCHER. I have in mind a case which I took up with the bureau, and they referred it out to the branch, and the branch took it up very promptly, as the correspondence showed, and the local doctor notified the boy to come in for an examination, but some of his folks were sick and there was a delay of three weeks, and while I was abusing the folks here because I could not get action I found that my own constituent had been three weeks in going up for his examination.

Mrs. BOGGS. We have been discussing the Veterans' Bureau along the money line, and I will say that a great many of these boys receive their money this week and next week they have not got it. It seems to me that if we could locate these boys somewhere and put them to work, and they need that more than anything in the world, then that would stimulate them to spend their money so that they would have something to show for it.

As long as they wander over the land, they are going to become a Government charge. They are spending their money and they have nothing at the end

of the month to show for it. That is why I suggest that we put them on ground belonging to the Government.

Mr. TEN EYCK. Was it not the early part of last year, in April, May, or June, that they started in to economize in the bureau, when Cholmeley-Jones was at the head of it? They commenced to cut down in the expenditures of the bureau, which was the beginning of the trouble. Later on they have been more liberal and are now to a great extent meeting the emergency, but at that time I told them that if they cut down the expenses in so important a bureau it was going to lead to trouble.

Mr. TINCHER. My experience has been with the bureau, and I say this with all due respect to everyone, Cholmeley-Jones and all, as the lady says, it came on us all over night and there has been a gradual improvement, if there has been any change in the functioning of the bureau, ever since it was formed, and as marked an improvement during the administration of Mr. Jones, if not more marked, than at any other time.

Mrs. BOGGS. Yes; he was really a very unusual man. He had a master mind.

Mr. KINCHELOE. The bureau does not seem to be organized down to the bottom. For instance, I had a claim for a soldier and I got a letter that his compensation had been allowed, and I got one later, I think it was in the same mail, from the same people, saying it had been refused. As a matter of fact it was allowed, but I mention that to show the situation in the clerical end of the work.

Mr. SINCLAIR. Mrs. Boggs, you are not attempting to do something with reference to the Veterans' Bureau now?

Mrs. BOGGS. Not at all. That is for you gentlemen on the hill to do.

Mr. SINCLAIR. You want to get the privilege to use some land in the mountains?

Mrs. BOGGS. I want to get the privilege of using some of this waste ground all through the country.

Mr. SINCLAIR. How much land is there in that reservation?

Mrs. BOGGS. I could not tell you that either, because I do not know. I think there is probably 1,500 or 1,800 acres or perhaps more.

Mr. SINCLAIR. You do not know how many soldiers that would accommodate?

Mrs. BOGGS. That would depend entirely upon what line of work they took up. Some would probably take up poultry raising, some agriculture, some horticulture, and some stock raising.

Mr. SINCLAIR. What type of veteran would you send up there?

Mrs. BOGGS. Well, I would send the arrested cases—some of them who are said to have arrested cases of T. B., who have been gassed slightly—and restore them mentally and physically while they were being taught to become good citizens and home makers.

Mr. ASWELL. Your plan would require legislation, of course?

Mrs. BOGGS. Oh, yes.

Mr. ASWELL. You have had no bill introduced?

Mrs. BOGGS. There is nothing of that kind that has been introduced, and I came up just to talk this matter over with you all in a heart-to-heart way and see if some plan could not be worked out whereby these men could be put to work as quickly as possible. The longer it is put off the harder it is going to be.

Mr. KINCHELOE. Who owns this land you have reference to?

Mrs. BOGGS. The Government.

Mr. SINCLAIR. I think you would run up against the question of taking land from the national forests or putting people on the national-forest reservations, which would be combated by the Forestration Commission.

Mr. TINCHER. Oh, no.

Mr. SINCLAIR. You think they would not care about it?

Mrs. BOGGS. Everywhere we turn we meet obstacles, and some of them are so perfectly useless. When this camp down the river was suggested, someone offered the use of some ground down the river for a camp for the sick boys who had been in the hospitals in roller chairs and on crutches ever since they were brought here from France. There was no money with which to feed them. It has been a great struggle to try to raise the money. We have the ground, we have the boys, and we can get these tents and beds and things of that kind from the War Department, and I think the Navy Department is perfectly willing to cooperate with us in lending boats and probably in letting them have a boat to go down every two weeks to take down a load of boys and bring back a load of boys, but there has not been any money to do these

outside things that would mean so much to the boys; and it is such a struggle to have to raise that money along with the other things that are being done.

Mr. SINCLAIR. Would any of these boys you speak of, or a majority of them, be drawing any compensation from the Government?

Mrs. BOGGS. These sick boys who would go to the camp?

Mr. SINCLAIR. Yes.

Mrs. BOGGS. Oh, yes; they would all be drawing compensation from the Government, but a great many of them I find have a wife or a child and a wife or a mother to whom they have to send money, and they need a home where they can be put and where they can have their family with them and where they can have employment and where the wife can have employment and the children be brought up to work and educated. As the situation is now, it just seems to me that instead of progressing and going ahead we are just simply letting the tide drift, which in time will bring upon us any amount of public charges.

Mr. ASWELL. Mrs. Boggs, have you any information as to the percentage of unemployment among the former service men?

Mrs. BOGGS. I have that at home, but I have not that with me.

Mr. ASWELL. You do not know the percentage?

Mrs. BOGGS. I could not give you that right off.

Mr. ASWELL. Do you think as many as 10 per cent are unemployed?

Mrs. BOGGS. Oh, yes.

Mr. ASWELL. More than that?

Mrs. BOGGS. Oh, yes; every bit of it. I felt sure that when I came up here and talked with you gentlemen, that you all would be able to work out something among yourselves, because your heart is certainly in the work and you have been so wonderful, everyone of you, in this work.

Mr. TINCHER. The Government now has a definite policy, and your plan would involve embarking or extending that policy. At present, as I understand the treatment the ex-service man is receiving from the Government, if he received an injury he is receiving compensation, or is supposed to be receiving it. We have a law providing for that and have appropriated the money to give him compensation for his care. If he was injured and needs hospitalization, we have appropriated the money for that.

Mrs. BOGGS. Yes.

Mr. TINCHER. Then we have passed a bonus law in the House for the man who was not disabled at all and that law will perhaps pass the Senate, at least it is to be hoped it will pass the Senate. Now, as I understand it, you are advocating the establishment of a camp where a man who is receiving compensation or who is convalescing in a hospital can go for a vacation or for a rest and recuperation.

Mrs. BOGGS. Yes.

Mr. TINCHER. You understand that if we do that we must not only establish a camp near by Washington for the few who are here, because we can not pass class legislation, and we must afford that relief to all the soldiers who are in that condition.

Mrs. BOGGS. Oh, I think you misunderstood me. This camp is being established by private contribution to test it out. The ground has been loaned us. The supplies, like tents and things of that kind, will be loaned to us, and we are raising the money to feed them by private contribution. That is relieving the Government of that part of it and is done to make these boys who are hospital cases more happy and more comfortable and to give them something to think about, and give them a vacation. What I had in mind a while ago was the cases that are around here that are not taking any vocational education at all, but who are simply drifting and spending their compensation, and it is for those boys that we think we should start this work.

There should be a settlement started, and they should be allowed to go on there with a 50 or 90 year lease. If they have not the money to build a home, then build them a comfortable, small home, and allow them to pay 5 per cent on that money until the home is paid for. This has just been thought out by myself, and you gentlemen can probably work out a plan far superior to this where they can be taught horticulture or agriculture or poultry raising or something of that sort, and then they would become good citizens and would have an object in life.

Mr. TINCHER. A man who now has an allowance for vocational training has access to the agricultural schools of the several States.

Mrs. BOGGS. But they say, after we learn this, where are we going to work? They have no ground to locate on, don't you see.

Mr. KINCHELOE. How would you provide that? As Mr. Tincher says, of course, this would have to be national in its scope; and in the States where there is no public land, where are they going to get any land to go upon?

Mrs. BOGGS. Let me make this suggestion to you: There has been, I understand, an appropriation made for a big hospital in or near Washington. I think quite a large amount of money has been appropriated for that purpose. Why could not an example of something of this kind be made right outside of Washington here, in Maryland, Virginia, or Pennsylvania, where you men could go and supervise it—not exactly supervise, but look it over and test it out to see what the result would be—instead of constantly building hospitals and encouraging them to go in hospitals and encouraging them to be sick, when a lot of them should be working? Why could not a place right near here be bought and some homes put on it where they could be put to work and trained at the same time? You would then have a big training center. They are trained in these hospitals now in a small way to do weaving and basket making. If you will go over to St. Elizabeths, in the new division on the left-hand side of the old building, you will be absolutely appalled at the wonderful work you see the mental cases are doing there. It is the most beautiful work I have ever looked at. I was there recently, and just before I went in one of the boys who was standing over a loom and had been doing exquisite work went into a state of coma, and I said to the girl, "What is the matter with him; I think I recognize him as having come from the naval hospital," and she said, "We can not get any reply from him; he has been standing that way two hours." I went over to him and put my hand on his arm and I said, "Why, hello John, your work is just beautiful. Tell me something about it."

He raised his eyes and then he dropped them again, and I suppose I was in there an hour, and I left him standing there just like a statute. I said to the girl in charge, "What will now be done with him?" And she said, "He probably will be taken out and put in some place until this spell wears off." They have these spells that come over them just that quick. I found there young boys who did not seem to be over 20 years old, almost children, at work; and old men, white-headed men, some working and some in such a condition that they could not work from the nervous effects of this war. One of them had gone into poultry raising and I was taken out to see the chickens they are raising. They are doing wonderful work over there, but it is in a small way and it is very much congested. I looked at them at that time and I just thought, "Oh, if you were just on a big place where you could be made to do things in a large way, where you can get results." All of this stuff was stacked up there, hundred of dollars worth of things, and I said, "What are you going to do with all this?" and they said, "Well, it is Government stuff and we can not sell it."

The CHAIRMAN. Has anyone been over this tract of land you have in mind?

Mrs. BOGGS. Yes; Captain Hawkins looked it over.

The CHAIRMAN. Is it cleared land or covered by forest?

Mrs. BOGGS. Some of it is forest land and there are two big hotels up there on a small tract that does not belong to the Government that is filled with tourists the year around.

The CHAIRMAN. It is at a high altitude?

Mrs. BOGGS. Yes; it is a wonderful place, and people come there suffering with hay fever and bronchial trouble.

The CHAIRMAN. How much land is there in this tract?

Mrs. BOGGS. I really would not like to say offhand, but perhaps this map will tell you. I will leave it with you because I really do not need it.

The CHAIRMAN. How many soldiers do you expect to accommodate at this camp?

Mrs. BOGGS. Two hundred. We can not raise enough money to feed more than 200.

The CHAIRMAN. And most of them will come from the Walter Reed Hospital?

Mrs. BOGGS. From the different hospitals, St. Elizabeths, Mount Alto, Walter Reed, and the Naval Hospital. There will be no cases that are violent but only those that are passive.

The CHAIRMAN. You are making progress and having good success, are you?

Mrs. BOGGS. Yes.

The CHAIRMAN. And you expect to have that camp open in the near future?

Mrs. BOGGS. We hope to have it open by the middle or the last of May, but that is financed entirely by private contribution.

The CHAIRMAN. Yes; I understand that.

Mrs. BOGGS. And that is only for the sick boys in the hospitals. This situation we are discussing now is for the man on the outside who has not work and who has to be taught and trained and led almost like a child. He wants to do but he does not know how to do, and there is only one way, and that is for the Government to do it. These clubs are working with us, the Lest-We-Forget Club, the Carry-On Club, the American Legion is in sympathy with us and seem to be doing what they can, and the Woman's American Legion Club and the Knights of Columbus, the Rotary Club. All of the clubs, pretty much, have come to our rescue and have not promised to raise any certain amount, but have promised to raise what they can for this camp. We have to have at the lowest estimate $55,000.

The CHAIRMAN. And you are going to give some entertainments and raise money in that way?

Mrs. BOGGS. We are giving a grand opera concert here on the 2d and 5th of May at the National Theater. We could not supply tickets enough for the 2d of May, so the artists are staying over, and it is being repeated on the 5th of May, and the tickets will be on sale at the National Theater.

Mr. ASWELL. How much land have you at this camp?

Mrs. BOGGS. Three hundred acres; right on the water.

Mr. ASWELL. Where is it located?

Mrs. BOGGS. It is on the Potomac River, diagonally across from Chapple Point. I guess quite a number of you gentlemen know where that is, because I understand many of you go down there for sea food. That ground has been loaned us for this work. I think that will be a great help and benefit to these boys and I think they will have a very happy summer there. That is our object. But I am going to ask you gentlemen to think this matter over and, anyway I can help you, I will be delighted to do it, because my heart is very much in this work, and these boys come to me from all over the country. They sometimes come to me and I ask them, "Why did you happen to come to me?" and they will say, "I was getting something to eat and I got to talking to some one and I told him I was stranded and did not know what to do, and he told me to come to you."

Mr. ASWELL. Mrs. Boggs, are you connected in any way, or have you any information as to the employment bureau located here in Washington, on Pennsylvania Avenue, opposite the Willard Hotel?

Mrs. BOGGS. I know there is a bureau there, but I am not connected with it in any way.

Mr. ASWELL. I am informed by Mr. Crowley, who has charge of that work here, that he has succeeded in finding work here in Washington for practically every man who has had vocational training.

Mrs. BOGGS. That is a Government affair, is it not?

Mr. ASWELL. Yes; entirely. He has about 100 men now at work in various activities in Washington. They are the men who have had vocational training and Mr. Crowley supervises them and follows them up and keeps in touch with them after they are employed.

Mrs. BOGGS. I do not know about that. I know the Lest-We-Forget Club that Mrs. John Allen Daugherty is at the head of has been very successful in finding work for a great many of them, not only here but away from here. We have also located quite a number of men, but the number seems to be getting larger and larger all the time.

Mr. ASWELL. Are there many unemployed former service men in Washington?

Mrs. BOGGS. Oh, yes; quite a number, and they seem to have the idea that if they come to Washington, inasmuch as this is the seat of government, they will not have a bit of trouble getting their compensation or getting work, and they keep coming here with that idea, and when they get here they find they are mistaken and they can not get work and they do not get their compensation. Numbers of them that I have spoken to do not know their Senators or Congressmen.

The CHAIRMAN. Have you conferred with the Forestry Service about this matter?

Mrs. BOGGS. The matter was discussed with a Mr. Graves who was with that service until recently and I think he thought it was a good idea.

The CHAIRMAN. Colonel Graves was at the head of the Forest Service and knows all about it and could tell us about the character of this land you have in mind.

Mrs. BOGGS. Yes; and it was through him that we got this map which I am going to leave with you.

Mr. VOIGT. Mrs. Boggs, suppose you can get permission for some of these ex-service men to go on the National Forests, is it your idea they should build huts or small dwellings in the forests and go into agriculture.

Mrs. BOGGS. It was not my idea that I should undertake it, or our organization, because we have already more than we can do now. My idea was to talk it over with you gentlemen and see if you could not work out some plan. I only make the suggestion that they should have a 50 or 90 year lease, and that they should pay 5 per cent for the money it took to build their homes.

Mr. VOIGT. Your idea is the Government should advance the money?

Mrs. BOGGS. That should be done probably through the Veterans' Bureau, or through some branch of it, instead of building all these hospitals and encouraging them to go into hospitals. They should not build any more hospitals but just simply make them go to work.

Mr. VOIGT. Your idea is that the Government should build small dwellings in the National Forests for individual soldiers and their families?

Mrs. BOGGS. Yes; those who are not ill.

Mr. VOIGT. And let them farm whatever land may be available?

Mrs. BOGGS. Yes; engage in agriculture or horticulture or poultry raising or dairying or something of that kind and settle them and make citizens of them instead of having them wandering around the country, as they are doing now. If necessary, have somebody there to train them instead of training in the Veterans' Bureau in a small way, where they are congested, as you will find now in these hospitals. All of the hospitals are training them, but they are terribly congested. In this way they would have a sale for what they make, whereas in the hospitals it is simply put on the shelf and they can not sell it.

Mr. VOIGT. What advantage would there be in letting them go on these forest reserves rather than to let them go on Government lands opened for that purpose?

Mrs. BOGGS. The Government lands would be better where they are opened. That would be much preferable to forest ground wherever you have Government ground that is idle and open.

Mr. ASWELL. Have you any information as to how many unemployed service men would choose to go on a farm and go to work?

Mrs. BOGGS. That would be almost impossible, because they do not seem to want to go back on your farm or my farm and work, but I think if they had a little place of their own that they could work it would encourage them to put their compensation in it and would encourage them to work; but the longer it is put off and the longer they lead an idle, listless life, with no incentive to do better, the larger the crowd is going to be and the less easy they will be to handle.

Mr. CLARKE. Mrs. Boggs, I think you are laboring under a misapprehension so far as a lot of the soldier boys are concerned. I have just this moment come from a conference with Colonel Forbes, and there were a large number present, and they find that a great number of the service boys are simply wanderers and have been in as many as 21 different hospitals and places where everything in the world is done for them under Government supervision, but you can not keep them down. They have simply got the wanderlust.

Mrs. BOGGS. Do you not think that it is a pity that the Government or the Veterans' Bureau or the hospitals, whichever it is, has allowed them to wander from one hospital to another as they have, and do you not think that if a boy is sick enough to go in a hospital he should stay there until he is well enough to leave and not wander from hospital to hospital?

Mr. CLARKE. You can not bring that discipline to bear upon them. They just arbitrarily quit and go away, and there is nothing you can do along that line.

Mrs. BOGGS. Well, what should be done with the masses who simply wander from place to place. What suggestion would you make?

Mr. CLARKE. Well, that is not my problem. That is up to Colonel Forbes and the people in the Veterans' Bureau.

Mr. GERNERD. I do not see how you are going to cure them of this wanderlust by putting them on a forest reserve.

Mrs. BOGGS. Do you not think it is increasing, though?

Mr. GERNERD. They want to get near the movies and get near the centers of population.

Mr. CLARKE. And they want to be near their fathers or their mothers.

Mr. GERNERD. You could give them the finest mansion in the world in the woods and if there was not a movie or places of that sort around that they could go to, they would leave.

Mrs. BOGGS. That is why I suggested a settlement.

Mr. GERNERD. You mean near Washington?

Mrs. BOGGS. That is why I suggested that instead of building hospitals to put them in in and around Washington, or anywhere else, establish a settlement where they can have their moving picture show and their schools and their churches, and where a man can have his wife with him or his mother or his child, and then let them pay back 5 per cent for the expenses the Government has been put to, instead of using all this money for hospitals and compensation.

Mr. TINCHER. There would not be any way for him to make any money to pay 5 per cent or any other per cent if he located in a hut on one of our Government forests. He could not make any money in that way.

Mrs. BOGGS. Do you think he would be able to do anything if he located near Washington and went into trucking or some line of work like that?

Mr. TINCHER. I may be entirely mistaken, but my notion is that the boy who would truck near Washington is at work to-day on a farm; that is, any boy who was in the Army and would go out on a place near Washington and raise truck and be at all satisfied, is to day out on a farm at work somewhere. I had a boy in my office the other day who has been in about nine hospitals. He is in very bad shape physically, but he gets tired and wornout and quits one hospital and goes to another. He admits that he has the wanderlust and he can not be satisfied anywhere.

Mrs. BOGGS. I can not help but feel that if he had a home of his own that would stimulate him to do better and would encourage him to work. Mr. Chairman, is that all?

The CHAIRMAN. We are certainly very grateful to you, Mrs. Boggs.

Mrs. BOGGS. I am very thankful to you for letting me come and talking to you about these things, because I have been so worried with these boys in trying to help them, and it seems impossible to handle the masses of them. Numbers of them speak of having little homes and so I thought I would come up and mention the matter to you and probably you gentlemen could work out something far better than I had even suggested.

I thank you.

The CHAIRMAN. The matter will be given consideration, and we thank you very much.

PACKER AMENDMENTS

HEARINGS

BEFORE THE

COMMITTEE ON AGRICULTURE

HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS

SECOND SESSION

MAY 2, 4, AND 6, 1922

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HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS, SECOND SESSION.

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PACKER AMENDMENTS.

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Tuesday, May 2, 1922.

The committee this day met, Hon. Gilbert N. Haugen (chairman) presiding.

There were present: Mr. Haugen, Mr. McLaughlin of Michigan, Mr. Purnell, Mr. Voigt, Mr. McLaughlin of Nebraska, Mr. Tincher, Mr. Sinclair, Mr. Hays, Mr. Thompson, Mr. Gernerd, Mr. Clague, Mr. Clarke, Mr. Jacoway, Mr. Rainey, Mr. Aswell, Mr. Kincheloe, Mr. Jones, and Mr. Ten Eyck.

The CHAIRMAN. Mr. Clague, we will now hear you on H. R. 10837.

STATEMENT OF HON. FRANK CLAGUE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA.

Mr. CLAGUE. Mr. Chairman, H. R. 10837 is an amendment to what is known as the packer act, to provide that any State may take charge of the weighing of live stock and also require commission men to furnish bonds to the State for the protection of those that ship live stock to the commission men.

There are here two members of the Minnesota Railroad and Warehouse Commission, who have charge of the present law of the State of Minnesota, where a law similar to this has been in effect for many years. The members of the commission are very familiar with this matter. There are not only two members of the commission here, but the superintendent who has had charge of the weighing and entire charge of the handling of the live stock in the State of Minnesota is also here. I will call on Mr. Putnam, a member of the Railroad and Warehouse Commission of the State of Minnesota, but before doing that I would like to say that Senator Kellogg is here and would like to say a word. Senator Kellogg has introduced a similar bill in the Senate.

STATEMENT OF HON. FRANK B. KELLOGG, A SENATOR FROM THE STATE OF MINNESOTA.

Senator KELLOGG. Mr. Chairman, I do not think I will take the time of the committee to discuss the merits of the bill. I will say that the Congressman and myself consulted with these gentlemen before the bill was introduced. They are fully prepared to go into the details of the bill and explain the reasons for it, and I think the committee had better hear them first, as it is unnecessary to go over it two or three times. Of course, I indorse what they say, because we have been over the matter very carefully with them, and therefore I think it will save the time of the committee to hear these gentlemen who are here waiting. I should, of course, be glad to have the committee report the bill after the hearing.

I might suggest, Mr. Chairman, that the Supreme Court passed upon the constitutionality of the packer act yesterday, but I could not get a copy of the opinion this morning. I will get it as soon as it is out, and if the committee wishes any suggestions as to the legality of this act or the constitutionality of it, we can present that afterwards with the opinion.

STATEMENT OF MR. FRED W. PUTNAM, MEMBER OF THE MINNESOTA STATE RAILROAD AND WAREHOUSE COMMISSION.

Mr. PUTNAM. Gentlemen, my name is Fred W. Putnam, a resident of the State of Minnesota. I am a member of the railroad and warehouse commission of that State and have been a member since November 15, 1917. During the hearings before this

committee in May, 1921, when this committee had under consideration the legislation resulting in the passage of the so-called packers' control act, there appeared before this committee representatives of the State of Minnesota in reference to the stockyard control as it was then carried on under the State statutes. Mr. R. J. Wells, supervisor of stockyards for the State of Minnesota, made a statement, appearing on page 31 of the printed reports of this committee, designated as "Meat Packers, Series D, May, 1921." Also the statement of George H. Sullivan, member of the State Senate of Minnesota, appears on page 48 of the same report. The statutes passed by the Legislature of the State of Minnesota and under which the railroad and warehouse commission has jurisdiction over the regulation of stockyards and commission merchants appear on pages 40 to 45 of said volume as a part of the testimony of Mr. Wells. I will not repeat those statutes. For some reason the statute authorizing the railroad commission to weigh live stock in stockyards is not included among the statutes presented at that time, and I request that a copy of the statute authorizing the railroad and warehouse commission, or directing them, to weigh live stock be incorporated as a part of my testimony at this point. It is chapter 14 of the special session of the Legislature of Minnesota for 1919, as follows:

CHAPTER 40—H. F. No. 54.

[An act to provide for the weighing of live stock at public stock yards under the jurisdiction of the railroad and warehouse commission.]

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. Appointment of weighers—Bond: The railroad and warehouse commission shall appoint at public stockyards such weighers as may be necessary for the purpose of weighing live stock. Every such weigher shall give to the State a bond in the sum of $5,000 conditioned for the faithful discharge of his duty.

SEC. 2. Reports—Certificates: Such weighers shall report daily to the supervisor of stockyard all weights taken by them in such form as he may prescribe. The supervisor of stockyards shall furnish to interested parties a certificate setting forth the number of animals weighed, for whose account weighed, and the actual weight of such animal or animals. Such certificate shall be prima facie evidence of the facts therein certified.

SEC. 3. Fees—Where deposited: The commission shall prescribe the fee necessary to cover the cost of such weighing to be assessed and collected in such a manner as the commission may prescribe. All moneys so collected shall be deposited in the State treasury and known as the "live stock weighing fund," and paid out only on order of the commission and the auditor's warrant. The interest received from such deposits of said moneys shall be credited on the 1st of each month to such fund, and notice of the amount of such interest shall be sent to the commission.

SEC. 4. Weighers' qualifications: No such weigher shall during his term of service be in any manner interested in the handling, shipping, purchasing, or selling of live stock, nor in the employment of any person or corporation engaged therein, nor shall he be a member of any live stock exchange or organization of like character.

SEC. 5. Bonds filed: All bonds required by this act shall be filed with the secretary of state, and suit may be brought thereon by any person injured by the misconduct of the principal.

SEC. 6. Appointment may be revoked: Upon written complaint filed with the commission, charging any such weigher with official misconduct, inefficiency, incompetency, or neglect of duty, the commission shall investigate such charge, and if it be sustained, shall remove such officer.

SEC. 7. Penalty: Any person not duly appointed and qualified, who shall assume to act as such weigher, shall be guilty of misdemeanor and be punished by a fine of not less than $50 nor more than $100.

SEC. 8. False weights or certificates—Penalties: Any weigher who shall knowingly or carelessly wiegh any live stock improperly, of give any false certificates of weight or accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty, or who shall be guilty of any neglect of duty, and any person who shall improperly influence, or attempt to influence, any such officer in the performance of his official duty, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than $100 nor more than $1,000, or imprisonment in the county jail for not less than 30 days nor more than one year, or by both such fine and imprisonment.

SEC. 9. Terms prohibited: Any person who is not connected with the State weighing de artment is hereby prohibited from using the term "supervisor of weights" or

'State weigher," any representation of the seal of the State, or any other words or device calculated or tending to indicate that the certificate or receipt is issued under State authority, or to otherwise deceive or mislead the public or any person interested, when issuing certificates or receipts purporting to show the weight of live stock. Any person found guilty of violating any of the provisions of this section shall be guilty of a misdemeanor.

SEC. 10. Interference with supervisor or weigher: Any person or corporation who shall obstruct any State supervisor or weigher in the performance of his official duties by preventing his proper access to the scales used in the weighing of live stock or otherwise, shall forfeit to the State $100 for each offense.

SEC. 11. This act shall take effect and be in force from and after January 1, 1920.

Approved September 22, 1919.

This series of statutes covers the regulation of public stockyards, commission men, and factors engaged in the buying and selling of stock in such yards. In fact, they cover the same ground as is covered by the Federal statute. We were simply about three years in advance of the Federal Congress. In addition thereto, they place additional safeguards around this industry for the protection of the shippers. The entire question as to whether or not the Federal or State authorities have jurisdiction under these statutes is now before the Federal courts by a proceeding instituted by the commission men in the South St. Paul stockyards.

Mr. TINCHER. That was all right up until yesterday, was it not?

Mr. CLAGUE. No; Mr. Putnam is talking about another proceeding.

Mr. PUTNAM. This is a proceeding commenced by the commission men of the stockyards of South St. Paul to restrain the State authorities from enforcing the State laws. That involves a conflict of jurisdiction and does not involve the constitutionality of the Federal act. It is a different question.

Mr. MCLAUGHLIN, of Michigan. What is the idea involved in that suit that you refer to?

Mr. PUTNAM. That involves the question——

Mr. MCLAUGHLIN of Michigan (continuing). Was that begun with the idea that the Federal law covers it and supersedes the State law?

Mr. PUTNAM. Yes; that it supersedes the State law.

Mr. MCLAUGHLIN of Michigan. And therefore they are objecting to the enforcement of the State law?

Mr. PUTNAM. Yes; if you will go back to the former record you will find there are five or six distinct acts of the Legislature of the State of Minnesota which cover various phases of stockyard regulation, and it brings in question all of those State statutes.

Mr. VOIGT. And that suit has not been decided?

Mr. PUTNAM. It has not been decided; no, sir.

Mr. MCLAUGHLIN of Michigan. And the idea is that the Federal law supersedes the State law, and therefore it is improper for the State authorities to undertake to enforce the State law?

Mr. PUTNAM. Yes; that the Federal law has superseded the State law and that the State authorities have no rights there at all.

Mr. VOIGT. Has the Secretary of Agriculture taken any steps at the St. Paul yards requiring weighing and feeding and other acts to be done with reference to stock in interstate commerce which is interfering with the State authorities?

Mr. PUTNAM. They have to this extent, that the commission men in South St. Paul—this is something I will refer to later and which Mr. Wells will go into later in more detail—but the commission men have taken the position, claiming to take it upon the advice of the Federal authorities, not recognizing the State authority. Now, Mr. Wells, our supervisor, will go into that transaction in more detail.

Mr. MCLAUGHLIN of Michigan. The commission men are paying your weighing charge now?

Mr. PUTNAM. They are paying our weighing charge, but that is due to a restraining order which we have from our State courts against the stockyards company.

Mr. JONES. Is there any other weighing done besides the weighing required by the State?

Mr. PUTNAM. There is no other weighing done there at the present time.

Mr. JONES. Does the Federal Government under the law approve the weights made by the State authorities?

Mr. PUTNAM. Under the law as it is now the ruling of the attorney for the Secretary of Agriculture has held that the Secretary of Agriculture must supervise the weighing, and that they can not supervise a State department, and that the weighing being a stockyards service must be performed by the stockyards company.

Mr. JONES. Must be performed by the stockyards company?

Mr. PUTNAM. And that the State can not perform it.

Mr. JONES. Do they take the position that the stockyards company may make a charge for the weighing?

Mr. PUTNAM. The stockyards company must be compensated from some source for the weighing.

Mr. JONES. If they take the position under the law now that the stockyards company must do the weighing, then there would be a double weighing, if the State is given authority to make a charge for the weighing?

Mr. PUTNAM. Of course, the object of this amendment is so that the Secretary of Agriculture will be given specific authority to recognize the State weighing department.

Mr. JONES. That is not the way this bill is worded exactly. It just says that nothing in this act shall be construed to prevent the State from appointing and paying weighers of live stock in commerce or to test or operate the scales upon which such weighing is done or to prevent any State from collecting from the persons for whom such weighing is done a fee of not to exceed 2 cents per head.

Mr. PUTNAM. Yes.

Mr. JONES. Now that does not require the National Government to accept those weights, and if we passed this measure, we might have the anomalous situation where the State would be left in charge of making the weights and the Secretary of Agriculture might require also other weights and require the seller or the purchaser to pay for two different weighings.

Mr. PUTNAM. No; I think if you study the act, you will find that the weighing service is a stockyards service.

Mr. JONES. Yes.

Mr. PUTNAM. And that the stockyards company now own the scales. It is just a question of granting State supervision over those scales.

Mr. JONES. Section 305 gives the Secretary of Agriculture the right to control the charges for stockyard services generally, and there are some references to it in other sections.

Mr. PUTNAM. Yes.

Mr. JONES. And that would include weights.

Mr. CLARKE. Outside of any technicalities about the language, just what injustice has been done?

Mr. PUTNAM. That is the point I am coming to.

Mr. JONES. I am simply trying to get clear whether you would not be in a position whereby a man selling—and the man who is selling finally pays all these charges—would have to pay for two weighings. It seems to me under the general provisions of the bill which simply provide that the charges and regulations made by the Secretary of Agriculture shall not prevent the State from making charges and regulations, would encumber the man who is doing the selling with two sets of weighings.

Mr. PUTNAM. No; that occasion would never arise.

Mr. JONES. Why not?

Mr. PUTNAM. For this reason: It is not the practice of the stockyards company to make a specific charge for weighing. The weighing comes in the yardage charge. That is a different charge. It has never been the practice to make a weighing charge. I might also cite the fact that in handling grain we do the weighing of the grain and the State of Minnesota——

Mr. CLARKE [interposing]. You mean by "we" the State?

Mr. PUTNAM. I mean the Railroad and Warehouse Commission, through our grain department, do the weighing of all grain that comes to our terminal markets. Now, that is under a provision very similar to this attached to your grain-grading act.

Mr. JONES. Right in that connection, you provide here that nothing in this act, which refers to the packer act, shall be construed to prevent the State from requiring a weighing by the State authorities, and nothing shall be construed to forbid a charge by State officials for that.

Mr. JONES. And yet there is nothing in the amendment nor, as I construe it, in the act that would require those purchasing or those selling to accept those weights as final, so what do you gain by having that? I am asking the question for information because I have not studied this bill thoroughly.

Mr. PUTNAM. Our State law provides for these weights being final.

Mr. JONES. But that would not be binding upon the Federal Government or on business in interstate commerce.

Mr. PUTNAM. The stockyards company furnishes the scales over which these transactions are closed. Now, in the handling of the stock, the stock is sold to a packer or to another buyer. It goes on to the scales, is weighed, and as the stock goes off the

ales, under the rules of those yards, the deal is closed. That is all provided for in e rules of the yard. Now, if I make any mistakes in my statement here Mr. Wells ll correct me.

Mr. JONES. Those rules are all subject to regulations made by the Secretary of griculture when they affect interstate commerce.

Mr. PUTNAM. Yes; they are.

Mr. JONES. And if you get this legislation you have not any way of making them ccept them.

Mr. PUTNAM. We do not want to put in any hard and fast rule that would be unreasonable so that they could not work out a satisfactory plan. The Secretary of griculture has taken the position that the law, as it now stands, is mandatory and hat he can not recognize the State authority. We are asking you to put in the law n amendment so that he has the right, legally, to recognize the State authority.

Mr. JONES. As a practical proposition, do you think if we put this in, the Secretary would accept them.

Mr. PUTNAM. I think so.

Mr. JONES. And would ratify it and cooperate with the State authorities?

Mr. PUTNAM. I think if Congress signifies that it is their policy to cooperate with the States——

Mr. JONES. You recognize that you would have no way of doing that unless the Secretary desired to do so.

Mr. PUTNAM. I can not go that far.

Mr. CLARKE. What is the injustice that has occurred in the matter.

Mr. PURNELL. Let us let the gentleman complete his statement so that we can hear what it is that he complains about.

Mr. JONES. I simply wanted to get his ideas clearly so that we might know upon what he based his judgment.

Mr. TEN EYCK. I would like to ask you one question. Is the Secretary of Agriculture's ruling based upon a ruling of the Attorney General as regards this law?

Mr. PUTNAM. It is based on a ruling of the attorney for the Secretary of Agriculture.

Mr. TEN EYCK. And not the Attorney General?

Mr. PUTNAM. It has been upheld informally but I do not believe there is a formal opinion from the Attorney General's Department.

The representatives of the State of Minnesota are not requesting Congress at this time to take any action to continue the activities of the State authorities where the Federal act covers the same field and furnishes similar protection to our shippers. We are simply asking a recognition by Congress of the State authority to the extent that the existing laws of the State supplement the activities of the Federal authority under the present act. These supplemental activities fall under two heads. The Federal act does not provide for the licensing and bonding of commission men or dealers in the stockyards. The State law provides that the commission men and dealers shall give a bond ranging from $5,000 to $20,000 for the protection of shippers and that the bond shall be approved by the State Railroad and Warehouse Commission of the State of Minnesota, and a license be issued thereon.

Mr. TINCHER. What is the size of that bond?

Mr. PUTNAM. Varying from $5,000 to $20,000. It is in the discretion of the commission within those limitations. During the existence of these statutes in the State of Minnesota there have been failures in those yards and shippers have recovered under those bonds. There has been a recent bond of $20,000 accruing to the benefit of the shippers of live stock and this is a very material protection to our shippers, which the shippers have signified their desire to continue and which the Federal act does not provide for. Now, understand that where stock goes into the hands of a commission firm from a shipper, the commission firm sells the stock, receives the money, and ordinarily that money which the commission firm simply holds as an agent is deposited with the bank, and the commission firm's personal check sent out, so that the commission firms have in their possession or on deposit in the bank in their account large sums of money, and when you have any failures some of those sums of money which really belong to shippers from the State have been used or checked against by the commission firm, and that is where your big losses occur.

Mr. TINCHER. You do not claim that the packer act does not remedy that situation. While it does not require a bond from the commission firm, you do not claim we have not taken care of that situation in the packer law?

Mr. PUTNAM. I do not understand that they require any bond. There might be some discretion in the Secretary of Agriculture in regard to that or the Secretary of Agriculture might establish a rule with reference to it. We have been trying to get the Secretary of Agriculture to establish a rule, but he has said that he has not gotten far enough along yet to rule with us on this proposition.

Mr. McLAUGHLIN of Michigan. You are talking about the bond proposition?

Mr. PUTNAM. Yes.

Mr. McLAUGHLIN, of Michigan. It is admitted or claimed by the Secretary of Agriculture that he has authority to require a bond?

Mr. PUTNAM. I do not so understand. That is a question of interpretation of the act, perhaps, but I find nothing in the act which authorizes the Secretary of Agriculture to require a bond. The act requires a commission firm to register with the Secretary of Agriculture.

Mr. McLAUGHLIN of Michigan. And he can practically control the methods of business of these commission men. Would not that include the requiring of a bond if the Secretary of Agriculture thought that proper or necessary?

Mr. PUTNAM. That is a question of the interpretation of the act. I do not think the act is clear on that point.

Mr. TINCHER. Do you mean that the act is not clear on the question of whether the Secretary of Agriculture has supervision over the commission men?

Mr. PUTNAM. No; as to requiring a bond. I am confining it to that question of requiring a bond.

Mr. TINCHER. Of course, the Secretary of Agriculture has been somewhat handicapped in the administration of this law by reason of the fact that its unconstitutionality has been in question, but I want to give testimony here that on the Kansas City market the supervisor has absolutely wiped out any question about whether a shipper got paid for his cattle after the commission man sold them; and the law is popular on that exchange right now for that one reason as much as any other one thing that can be said in its favor.

Mr. PUTNAM. I do not think there is any question but what the Secretary of Agriculture can adopt rules that will put safeguards around the commission men so that they can not use money that is not rightfully theirs, but I think there is some question as to whether they can go to the extent of requiring a bond.

Mr. McLAUGHLIN of Michigan. If the Secretary of Agriculture has considered that matter and is in doubt as to his authority, I hesitate to express an opinion, but my impression is that the authority given to the Secretary of Agriculture to supervise and regulate and control these matters is such that he could go to the extent of requiring a bond from the commission men.

Mr. CLARKE. I believe there is certainly sufficient authority in the law, but of course the Secretary has got to feel his way along; but if there is any injustice anywhere, in due course the Secretary, who is a longheaded, able man, will come to us and advise us about it.

Mr. McLAUGHLIN of Michigan. The Secretary of Agriculture, of course, has advised with the legal gentlemen connected with his department and perhaps with the Attorney General's Department, so that if there is a doubt as to his authority, as I say, I would hesitate to express an opinion.

Mr. PUTNAM. I know that no bonds have been required.

Mr. McLAUGHLIN of Michigan. It seems to me, from what you say, that the requiring of a bond is a very necessary thing.

Mr. PUTNAM. It is absolutely necessary.

Mr. McLAUGHLIN of Michigan. And it is strange to me that it would not be looked upon as necessary by the Secretary of Agriculture, and it seems strange that he has not assumed that authority. I think under section 407 he has that authority.

Mr. PUTNAM. Here is what has happened in our State. No bond has been required. Following a hearing of last December, a letter——

Mr. McLAUGHLIN of Michigan (interposing). Up to this time your State authorities have never required a bond of the commission men?

Mr. PUTNAM. The Federal authorities——

Mr. McLAUGHLIN of Michigan. Have the State authorities?

Mr. PUTNAM. We have, $20,000.

Mr. McLAUGHLIN of Michigan. For how long?

Mr. PUTNAM. Since January 1, 1920.

Mr. McLAUGHLIN of Michigan. And now you wish to continue to do that. Does the Secretary of Agriculture interfere with your doing it?

Mr. PUTNAM. Yes, sir.

Mr. McLAUGHLIN of Michigan. He forbids you to require a bond?

Mr. PUTNAM. Not exactly that.

Mr. McLAUGHLIN of Michigan. What does he say about it.

Mr. PUTNAM. Here is what happened. I can tell you just what happened. In December last, 1921, a hearing was held in the yards there at South St. Paul at which there was a representative of the Secretary of Agriculture, for the purpose of gathering

general information in regard to the stockyards. There were present commission men, representatives of the yards and shippers, and we had a representative there from our commission. Within a few days after that hearing, there was a letter issued by the St. Paul Stockyards Exchange recommending to their members, who are the commission men, that they cancel their bonds with the State Department, and there was an inference in the letter that this was done following a conference with representatives of the Federal department.

We immediately presented that letter to the Federal department and asked if this letter was issued upon any authority from them. The Federal department denied they had said anything which would give the South St. Paul Exchange any basis for such a letter, but nevertheless that letter was issued and practically all the bonds—I think there are four bonds left in effect—but practically all the bonds were canceled with the State Department, so that since January 1, there has been no bond. Now, that is a fact that exists there. The thing we are objecting to is that there are no bonds. We believed—that is, our legislature has deemed it necessary for the protection of the shippers to have bonds from these commission men for the benefit of shippers.

Mr. McLAUGHLIN of Michigan. You say those bonds have been canceled?

Mr. PUTNAM. Yes, sir.

Mr. McLAUGHLIN of Michigan. By direction of the commission merchants?

Mr. PUTNAM. Yes.

Mr. McLAUGHLIN of Michigan. They gave those bonds in compliance with the State law?

Mr. PUTNAM. Yes.

Mr. McLAUGHLIN of Michigan. Under those circumstances can one party to that transaction cancel the bond without the consent of the other?

Mr. PUTNAM. Those bonds expired, you see, on January 1, 1921.

Mr. McLAUGHLIN of Michigan. They have not renewed them. They were not canceled but they just failed to renew them.

Mr. PUTNAM. And the licenses are issued for a period of one year so that they simply did not renew them after the 1st of January.

Mr. McLAUGHLIN of Michigan. When the State issued a license for a new year it required the filing of a bond?

Mr. PUTNAM. Yes.

Mr. McLAUGHLIN of Michigan. And if the bond was not filed the license was not good.

Mr. PUTNAM. They are not acting under licenses from the State.

Mr. TINCHER. Assuming that the requiring of a bond from a commission man is a proper regulation and a necessary regulation, and assuming for the purpose of the argument, which I do not admit because I am advised to the contrary and am advised that the Secretary of Agriculture and his department believe that under the enforcement of this law they would have the right to require a bond as the law is worded at present, but assuming it was necessary to amend this law so as to permit the requiring of a bond, certainly the way for this committee to look at that would be to amend the law so as to permit the Secretary of Agriculture to require the bond and not amend it so as to permit the several States to require a bond.

Mr. PUTNAM. No; I would not say so, because there is this phase of the situation, gentlemen: I believe the man on the job can handle the matter of those bonds better than they can be handled from Washington. It is a question of whether you are going to centralize all of this authority in Washington or not.

Mr. CLARKE. You were anxious to get it centralized when you were down here before.

Mr. PUTNAM. No; not the State of Minnesota.

Mr. CLARKE. Yes; the State of Minnesota.

Mr. PUTNAM. No, sir.

Mr. CLARKE. Oh, yes; they were.

Mr. JONES. I think there is a better argument for the bond feature of this matter than there is for the other.

Mr. TINCHER. The same statement I made with reference to the bond feature would apply to the weighing proposition. It is not necessary to have the State regulating the weighing in one place and the Government in another, because I think it would be unfortunate if there were two weighings.

Mr. PUTNAM. If the Federal Government went extensively into the matter of weighing in all of these yards and put in their scalemen for tests and it was advisable to build up an immense Federal department to do that, of course, that might be all right.

Mr. TINCHER. Here is the proposition: In administering this law the Secretary of

Agriculture, if he is efficient, must require the proper weighing of stock in the yards by the commission men, and he must supervise that.

Mr. PUTNAM. Yes; he must supervise that.

Mr. TINCHER. Now, other States have not passed laws similar to the laws of your State, and we, acting for the Federal Government, have thought that we passed a law here that authorized the Secretary of Agriculture to supervise the proper weighing of this live stock. Now, ought there to be a duplication there?

Mr. PUTNAM. I can give you my idea about that from the statement I have here.

The second phase of regulation is that of the weighing of live stock and the issuance of State weights. The Federal act declares that weighing is one of the stock-yard services to be furnished by the stock yards company. It provides for general supervision over such service by the Federal Government. This language has been interpreted by attorneys for the Secretary of Agriculture as mandatory upon the Secretary, and that in spite of the cooperative provision in the statute he has no authority to recognize the State department and authorize the State to continue the weighing of live stock.

Now, there is a cooperative provision in the statute. We asked for a much broader provision at the time of the passage of this act, but there was a slight cooperative provision included, which, on the face of it, seemed to recognize that the State had certain proper fields of action, but now when you come to construe the law they say that that cooperative provision is of no effect.

Mr. VOIGT. Let me ask you a question right there. That section, 407, provides that the Secretary may cooperate with any department or agency of the Government or any State, Territory, District, etc.

Mr. PUTNAM. Yes, sir.

Mr. VOIGT. Now, under that provision the Secretary of Agriculture could delegate to your commission in Minnesota the duty of looking after this weighing and looking after the matter of the bonds.

Mr. PUTNAM. That is just what the attorney for the Secretary says they can not do.

Mr. TINCHER. He probably says he will not do it, and I would not want him to do it.

Mr. PUTNAM. No, Mr. Tincher; that is not true. The attorney says this act is mandatory, and that he can not delegate that authority to the State.

Mr. TINCHER. Now, let us see whether we would want that done or not. I ship live stock from Kansas to Chicago, and I am very much interested in this law. Now, who do I want to weigh my stock when it gets to the stockyards in Illinois? Whose supervision do I want it to come under, State supervision of Illinois or Federal supervision? What excuse would there be for passing a Federal control act and then letting there be a duplication to the extent that the Illinois State Commission could control my live stock when it got to Chicago just because it was in Illinois?

Mr. PUTNAM. The answer to that question at the present time is that your Federal act does not provide for the weighing of this live stock by the Federal Government.

Mr. JONES. Just in that connection, in your proposed law here, you do not say that the Secretary of Agriculture may adopt and utilize the State facilities or the State weigher, but you say that notwithstanding the Secretary may adopt a system of his own that nothing in the act shall be construed to prevent any State from having a system of its own and charging for it. Now, if you so worded your proposed law as to clear up what you say is the ruling of the attorney of the Secretary of Agriculture, as to whether or not the Secretary has authority to adopt or utilize your State facilities, that would be a different proposition. You could accomplish that by saying that nothing in this act shall prevent the Secretary of Agriculture from utilizing any of the State authorities or agencies for weighing.

Mr. PUTNAM. So far as the wording of the law is concerned, I have not really made a study of that so as to get at the technical language that should be used in order to accomplish this purpose.

Mr. JONES. I see.

Mr. PUTNAM. Our purpose is to have it framed so that the Secretary of Agriculture can recognize our State Department and we can give a service to our shippers that they are asking for.

Mr. JONES. That is all you want?

Mr. PUTNAM. That is what we want. The shippers are the ones that are asking for it.

Mr. MCLAUGHLIN of Michigan. I would be afraid this would go further than recognizing what you are doing if you put in here language providing that nothing should prevent them from carrying on their own weighing. That would take away all authority that the Secretary of Agriculture would have to supervise, regulate, or correct your mistakes or anything of that kind. I would like to know the reason the attorneys

for the department give for their very limited construction of that word "cooperate." Mr. Jones, of Texas, has suggested that it might be amended so as to authorize the Secretary to adopt and approve some work being done by the States under State law. It seems to me that word "cooperate" is broader than any language Mr. Jones suggests.

Mr. PUTNAM. We were of that opinion.

Mr. MCLAUGHLIN of Michigan. My impression is that that word "cooperate" would authorize the Secretary, if the finds a proper weighing system at St. Paul, to allow it to go on, but with authority to oversee it and make a change if he found that necessary.

Mr. PUTNAM. Mr. Congressman, the correspondence from the Secretary of Agriculture and the opinions are available and will be filed in this proceeding, and I believe Mr. Clague has those in his office now and we will file them so you can get the opinion upon which the Secretary of Agriculture is acting. It was our belief, just as yours seems to be, that under that provision he could come to the State Department and say, "Now, gentlemen, you have got a service here which your people want and under certain conditions we will let you continue this service" We thought that could be done.

Mr. MCLAUGHLIN of Michigan. I do not think it was ever the intention of those who framed this act to require the Secretary of Agriculture to do everything or to engage employees and agents to do everything. This is a supervisory or a regulatory act. It is not intended to authorize him to do everything himself, and if he finds the work going on satisfactorily he might approve it and let it go on or if it was wrong in any respect he could suggest corrections. The legal advisor of the Secretary of Agriculture is here and we are always pleased to hear from him and attach great weight to his opinions, and I would like to know what he says as to his reasons for the interpretation which you say he has put on the word "cooperate."

The CHAIRMAN. Do you want to hear from him now?

Mr. CLAGUE. Mr. Morrill has those opinions here.

Mr. MCLAUGHLIN of Michigan. I dislike to interrupt the witness but it seems to me that it would be logical to clear that matter up at this point.

Mr. PURNELL. That is the crux of the whole situation. Why can we not have that statement now.

The CHAIRMAN. Is that agreeable to you, Mr. Putnam?

Mr. PUTNAM. Yes.

Mr. MORRILL. I should be very glad to comply with the request of the committee if you desire, but I thought perhaps it would be better to wait until I made my statement covering all the phases of this matter. The question, however, can be discussed at this time if you desire.

Mr. MCLAUGHLIN of Michigan. It comes right in connection with this question, Mr. Morrill. Of course, if you prefer to follow the other plan, I would hesitate to ask you to depart from it; but it would seem to be best to take the question up right in this connection.

The CHAIRMAN. Then, we will hear you now, Mr. Morrill.

STATEMENT OF CHESTER MORRILL, ASSISTANT TO THE SECRETARY, IN CHARGE OF PACKERS AND STOCKYARDS ADMINISTRATION, DEPARTMENT OF AGRICULTURE, WASHINGTON, D. C.

Mr. MORRILL. In the consideration of this matter the Secretary, of course, takes the position that the adoption of such an amendment as this to the packers and stockyards act, 1921, involves a question of legislative policy, and in the decision of the committee, after considering all the facts, he would readily concur. There is to be considered the fact that the proposed amendment applies to all yards in the country where the States may seek to exercise jurisdiction of the kind set forth in the proposed subdivision (d) of section 405 of the act.

Mr. MCLAUGHLIN of Michigan. Mr. Morrill, you are going into a general discussion of it.

Mr. MORRILL. Yes, sir.

Mr. MCLAUGHLIN of Michigan. Don't you think under the circumstances you can confine yourself to this question of bonds and the meaning of the word "cooperate"?

Mr. MORRILL. That is exactly what I propose to do, and that is the reason why I am stating the proposition in its general aspect, in order to answer your questions. The point that I am making is that this is regulatory. It provides authority on the part of the States to regulate these two subjects—the weighing and the bonding in these yards. It takes it away from the supervision of the Secretary of Agriculture entirely.

Now, it is true that section 407 of the act authorizes the Secretary of Agriculture to cooperate with any State, Territory, or District. That does not mean, however, that

the Secretary of Agriculture is authorized to delegate the jurisdiction possessed by him to a State, as is proposed by the State of Minnesota.

The question of the authority of the Secretary of Agriculture was first passed upon by an attorney for the packers and stockyards administration, and the Secretary, desiring to be assured about the validity of the attorney's opinion, submitted the matter to the Attorney General, who passed upon the opinion informally by letter in order to facilitate the disposition of the matter. The Attorney General makes this statement in his letter:

"I have given careful consideration to your letter of January 14, 1922, in which you ask for my opinion concerning an apparent conflict between the provisions of the packers and stockyards act, 1921, and the regulations of stockyards by the statutes of the State of Minnesota.

"The laws of the State of Minnesota provide for supervision and regulation, including actual weighing of live stock by State officers under supervision of the railroad and warehouse commission of such State. The packers and stockyards act, 1921, gives similar supervisory power to the Secretary of Agriculture. That there is a conflict between the State and Federal laws in this respect can not be questioned. If the Federal law is within the constitutional rights of Congress to enact, such law in our system of government is necessarily supreme and paramount within its sphere, and there can be no room for divided authority.

"The question, then, in the last analysis is as to the power or right of Congress to enact the packers and stockyards act, 1921, with respect to the supervision and regulation of stockyards as therein provided. It is the duty of executive officers to assume the constitutionality of an act of Congress and to enforce its provisions until such act of Congress is declared unconstitutional by a court of competent jurisdiction. In the absence of such action by the courts, an executive officer has no discretion to exercise and no alternative but to enforce the law.

"It appears that no court has declared this law unconstitutional and, therefore, it is your duty to enforce the same as a valid act of Congress which is, as above stated, supreme in its sphere of action over any State law upon the same matter and which will admit of no divided authority between the Federal and State officers.

"The suggestion has been made that you may delegate the State officials to represent you in the enforcement of such law, in respect especially to weighing of live stock in the South St. Paul stockyards. Congress has imposed upon the Secretary of Agriculture the duty of administering this act and such duty and obligation can not be delegated to officials of any other government but must be performed by the Secretary of Agriculture or his duly authorized and acting agents and officers.

"In arriving at the above conclusions careful consideration has been given to all of the briefs and memoranda presented with your communication, together with any others that may have been filed with the department upon this question, and I am of the opinion that the recommendations contained in the memorandum by Judge Hainer, that it is your duty to enforce this law and in such enforcement no division of authority is permissible and you are not permitted to delegate any of your authority to State officials, are proper. Of course, in arriving at such conclusion, Judge Hainer has considered and passed upon the constitutionality of the packers and stockyards act, upon which question I feel at this time I should express no opinion, as above stated.

"In accordance with the suggestions in recent conversations with your representatives, I am not issuing this as a formal opinion to be published as an opinion of the Attorney General, but in the nature of a letter or memorandum for the use of your office."

Mr. McLAUGHLIN of Michigan. Well, I hope it will not be published as an opinion of the Attorney General, because, realizing what it means for me to differ with the Attorney General, I do take issue with him. You are not delegating your authority at all. This is not a thing that the act requires you to do, the weighing of these products. You are required to supervise and see that it is properly done. If it was something that the act required you to do, then you could, of course, not delegate your authority. But you are not delegating any authority in this matter at all. You are required to supervise and see that it is properly done, and if you find that activities carried on in the stockyards are properly done, you are satisfied; you have supervised it. You have no reason to take exception to it, and you let it go on. That is regulatory. That is what you do in a supervising capacity. I do not see how anyone reading this act can say that all of this multitude of things must be done by the Secretary of Agriculture or by men employed by him. He simply regulates and supervises, and if things are being properly done he lets them go at that, and that, it seems to me, would be his duty respecting weighing. If he had any reason to suspect

that it was not being properly done he could suggest changes. If the changes were not complied with, he might take it over entirely himself. But it seems to me that he certainly has authority to see that it is properly done, and regulate, and he has authority to permit it to be done by others by authority of this word "cooperate."

Mr. PURNELL. He might even cooperate with one State and refuse to cooperate with another.

Mr. MCLAUGHLIN of Michigan. Yes.

Mr. VOIGT. Mr. Morrill, can you give us an illustration of a lawful cooperation on the part of the Secretary under section 407?

Mr. MORRILL. The Secretary of Agriculture has not taken the position that he is required by this law to weigh live stock. That does not mean that he has not the authority, if it should become necessary for any sufficient reason, to enter upon that question, but we have not taken the position that we are required to weigh live stock. We have not taken the position that we should take over the weighing of live stock in the South St. Paul market in the way of using Government employees for the purpose of doing the actual weighing. We do take the position that the weighing in the South St. Paul stockyards or any other place must be done subject to the supervision of the Secretary of Agriculture and in accordance with such regulations as he may make for the purpose.

Mr. TINCHER. Now, right on that subject. I like to agree with everybody if I can, but I can not in just this instance. You are obligated by this act to supervise the operation of the stockyards and commission men and traders. Weighing is done there. If I ship my stock in to market that weighing is done there, and that is a part of your supervision. Now, as a matter of fact, it has been suggested by some that you might properly delegate that power to some State officials who are making a charge for doing it. I am inclined to agree with the Attorney General that you could not do that under this act, because instead of charging a man, say 1 cent a head, they could charge 10 cents a head, and that would be an improper delegation of power on your part to do that. However, if you could, it seems to me that it would be a pretty unfortunate thing for the shipper. Now, have any shippers of live stock protested to you as the head of the enforcement division, enforcing the packer law, against the fact that their stock was to be weighed by others?

Mr. MORRILL. Yes, complaints have been lodged with us; several complaints.

Mr. TINCHER. Are they from the shippers or the salaried men under the State law? You see, there is sometimes quite a difference of view between the man who ships cattle to the market and the man that draws a salary under the State law for doing something that the Government is not doing.

Mr. MORRILL. We have got complaints coming to us in various ways. So far as we are concerned, our attention was called to the matter by the Department of Markets of South Dakota. Section 309, subdivision (b), of this law provides that—

"The secretary at the request of the live-stock commissioner, board of agriculture, or other agency of a State or Territory having jurisdiction over stockyards in such State or Territory, shall investigate any complaint forwarded by such agency in like manner and with the same authority and powers as in the case of a complaint made under subdivision (a)."

Which refers to shippers. Now, the State of South Dakota filed a complaint. This was filed by F. O. Simonson, of the Department of Markets of the State of South Dakota, under date of September 8, 1921. His letter to the Secretary of Agriculture is as follows:

"On August 18 I made an investigtion as to the live-stock marketing conditions at the South St. Paul Stockyards. In connection with various matters that came under my observation I found that an order had been established by the Minnesota Railroad and Warehouse Commission whereby a fee of 2 cents per head was charged for weighing cattle sold at that market, 1½ cents per head for hogs, and 1 cent per head for sheep.

"During the past two years I have had occasion to visit a number of live-stock markets west of Chicago and it is the only market where I have made an investigation that charged a fee for the weighing of live stock sold at those markets.

"During the month of July, 2,438 head of cattle, 303 head of calves, 15,209 head of hogs, and 811 head of sheep were shipped from South Dakota points to the South St. Paul Stockyards and marketed at that point.

"During the month of August the shipments from South Dakota points to the South St. Paul market were 8,192 head of cattle, 754 head of calves, 13,341 head of hogs, 1,227 head of sheep, and the penalty that our shippers had to pay for the weighing of this live stock at the South St. Paul market amounted to $692.37.

"Based upon former shipments from South Dakota points to the South St. Paul market, our shippers would pay a penalty of approximately $6,000 a year under this order.

"I feel that our shippers are not deriving one cent of benefit through the establishment of this order by the Railroad and Warehouse Commission of the State of Minnesota, and hope that some action will be taken by the Department of Agriculture whereby the provisions of this order would not apply on interstate shipments."

And it was following that that the live-stock exchange at South St. Paul registered a formal complaint with the Secretary of Agriculture against the continued enforcement of the State law, and then from other sources the matter came up, and it was following that that the meeting was held in South St. Paul to which Mr. Putnam referred, where the whole question was gone into from all the different angles, and that finally resulted in this opinion by the Attorney General.

Mr. TINCHER. I do not believe you understood me a while ago, or I did not make myself clear. What I meant to ask was if you have had a request from a shipper for you to permit as a part of the regulation of the South St. Paul yards that they charge the man for weighing the stock, the State official people?

Mr. MORRILL. I do not know that we have had a request from an individual shipper. We have had statements sent to us from both sides of the case, by organizations, as there naturally would be in such cases as this. There are some organizations that favor the continuance of the State weighing service at South St. Paul by the State, and others that are opposed to it. So far as individual shippers are concerned I think all of our communications have been by way of complaints against the continuance of the service.

The question, as you will note, and as it was presented, was not the question of authority on the part of the Secretary of Agriculture to cooperate with the State, but the question of having the Secretary of Agriculture leave the State in control of the situation requiring a weighing charge and a bond and depriving the Secretary of Agriculture of any control over those matters. That is not cooperation.

Mr. MCLAUGHLIN of Michigan. Are you speaking now of what the situation would be if this bonding bill should become law?

Mr. MORRILL. I am speaking of what the situation has been and what it will be under this bill, both.

Mr. MCLAUGHLIN of Michigan. I am thinking that if this should become law the Secretary of Agriculture might be justified in thinking that even his regulatory authority, as far as weighing and bonding is concerned, would be taken away from him.

Mr. MORRILL. I think that is a correct interpretation of this, and that is the position that we have had to face in the past. The State law covers the matter of weighing and of bonding and of other matters, without regard to whether interstate commerce was affected or not. In other words, the present State law expressly provides for the placing of State weighers and for the rendition of the service and for the collection of the charge from the shipper—that is to say, of course, the commission man pays to the State, but he is required to collect that charge from the shipper.

Mr. JONES. And at most you think it should not be more than permissive; it should not be mandatory?

Mr. MORRILL. It must be borne in mind that this law does not provide for the exercise of regulatory power over State agencies as such.

Mr. VOIGT. Well, Mr. Morrill, is not the situation as it stands now this: The act of Congress here provides for the exercise of jurisdiction over live stock in interstate commerce. When the live stock is in interstate commerce the authority of the State can not attach. Therefore the Minnesota law which provides for this weighing as to cattle which pass through the South St. Paul yards would be unconstitutional.

Mr. MORRILL. That is the opinion.

Mr. VOIGT. That is your opinion?

Mr. MORRILL. Yes, sir.

Mr. VOIGT. Now, then, if the Secretary of Agriculture saw fit to allow the Minnesota authorities to do this weighing he would in some way have to delegate that authority to them if it is possible for him to do it.

Mr. MORRILL. Yes, sir.

Mr. VOIGT. And if not, then this act would have to be amended so as to give the Secretary of Agriculture the power to delegate that authority to the State Board of Minnesota, if that was thought desirable.

Mr. PURNELL. Is that a delegation of authority if the Secretary of Agriculture permits the State of Minnesota to do this for the Department of Agriculture and at all times exercises supervision over it? Is that a delegation of authority if to-morrow that power can be cut off, provided it does not meet the requirements?

Mr. MORRILL. If the committee wishes State agencies to perform a service in the same manner that commercial agencies perform it, subject to the regulatory power of the Secretary of Agriculture, that is not a question that has been presented.

Mr. PURNELL. Do you not think that power is vested in the Secretary of Agriculture under Section 407?

Mr. MORRILL. That might be, provided the weighing were rendered as a service and not as a mandatory requirement of State law.

The CHAIRMAN. You could cooperate with them as you do in the grain inspection, could you not?

Mr. MORRILL. In the case of the grain standards act, there the Secretary of Agriculture has just the same authority and supervision over State grain inspectors that he has over any other class of inspectors. The only limitation is that a State grain inspector must be licensed.

The CHAIRMAN. Yes, but you could employ one of their officials at a nominal salary and recognize the acts of this agent as the Federal agent?

Mr. MORRILL. It is of course possible under this law and under many of the laws applying to the Department of Agriculture, to employ State agents, State employees, State officers, under cooperative arrangements where it is desirable to do so, and it is done frequently.

Mr. CLAGUE. Now, under the Minnesota law all the grain is weighed by the State grain weighers under the supervision of the Secretary of Agriculture, is it not?

Mr. MORRILL. We have no jurisdiction of the weighing of grain in Minnesota under any law.

Mr. CLAGUE. But it is all done by the State there?

Mr. MORRILL. Yes.

Mr. CLAGUE. And the inspection is done by the State?

Mr. MORRILL. The inspection of grain is done by the State, by inspectors who are licensed by the Secretary of Agriculture, and over whose actions the Secretary of Agriculture has precisely the same jurisdiction as over any others, but that is expressly provided for in the law.

Mr. JONES. Now, Mr. Morrill, you have read this proposed provision here. If that provision should be adopted just as it is worded, and the Secretary of Agriculture should find it necessary to establish a weighing system of his own, then with this provision any State could also in addition require this further charge for their weighing and maintain their own machinery in spite of all your regulations, couldn't it?

Mr. MORRILL. If such a condition should arise it is perfectly manifest that there is nothing that we could do in the way of denying to a State its right to maintain its organization.

Mr. JONES. And there is nothing that you could do to deny it making a charge.

Mr. MORRILL. That is true. We would have no power over the organization or the charge.

Mr. TINCHER. Here is an illustration which I think will make it easy to understand what you mean. At Kansas City at present there is no charge for weighing live stock.

Mr. MORRILL. No.

Mr. TINCHER. The live stock is weighed in the stockyards and under the supervision of the Federal authorities. Now the State of Missouri can enact a law similar to the law of Minnesota and set up this department at Kansas City, Mo. You would not have any choice in the administration of the packer act as to that, because they are excepted; you can not interfere with the weighing.

Mr. MORRILL. Yes.

Mr. TINCHER. So they would weigh all the cattle and all the hogs that came from Arkansas and from Texas and Nebraska and Kansas on that market, and charge for it, and I do not know why Missouri would not do it; it would not hurt them. They would furnish lots of good salaried officers. They could take quite a chunk of money out of the shippers.

Mr. PURNELL. If we passed this amendment, would we not invite all of the States to do the same thing—pass similar statutes?

Mr. MORRILL. I may say that the Secretary of Agriculture has been greatly hampered in doing anything at South St. Paul by this condition of affairs at that market, for these reasons—that the State has continued to take the position that all stock coming through the market must be weighed by the State, and that the charge imposed by the State must be collected by the commission men from the shippers, and also that the commission men must continue to make their bond to the State. And while that was going on the stockyards company undertook, by statement at least to the public and to the Secretary of Agriculture, to take over the weighing of the live stock in the South St. Paul Yards, provide its own weighers, and continue to perform the

service under the supervision of the Secretary of Agriculture without additional charge; that is to say, the whole expense would be absorbed in the stockyards charges. The cost of that service to the shippers is from $60,000 to $100,000 a year, and it is stated that it averages around $1.09 a car. I have not made those figures myself. I am merely taking the statements that come to me on that point

Now the Secretary of Agriculture was faced, when the stockyards company made that offer, with the immediately following fact that the State brought suit against the stockyards company to enjoin it from putting in its own weighers, and that case is still pending in the State court.

Mr. McLAUGHLIN of Michigan. Now, Mr. Morrill, right there, I think you are unfortunate in some of the words you use. You say that the State offered to take over from the Department of Agriculture the work of weighing. I do not think they are taking it over at all. I think it is a work that they can very properly do, and you should be satisfied if you find by your supervision that they are doing it properly and that the charges they make are not unjust. It is not a work that this act requires the Secretary of Agriculture to perform; therefore he does not turn it over to anybody.

Mr. MORRILL. I do not think that I used the expression that the Secretary of Agriculture would turn over the weighing to the——

Mr. McLAUGHLIN of Michigan. Pardon me, you did say, as I remember it, that the State offered to take over the work of weighing.

Mr. MORRILL. I said the South St. Paul Stock Yards.

Mr. McLAUGHLIN of Michigan. Well, somebody offered to take it over.

Mr. TINCHER. Well, the State is doing it, Mr. McLaughlin.

Mr. McLAUGHLIN of Michigan. Well, it is not a taking of it over. It is not something that is imposed upon the Secretary of Agriculture which he does not do and somebody does for him.

Mr. TINCHER. You did not catch his meaning at all. The State is doing the weighing now. The Secretary of Agriculture has power to supervise them; no question about that. Now, the stockyards company proposed to do that like they do in every other yard in the United States, and that weighing, of course, would be under the supervision of the Secretary of Agriculture. But here comes the State. Think of this now. Here the State has enjoined the stockyards company from weighing an interstate shipment of live stock in the stockyards of South St. Paul under the supervision of the Secretary of Agriculture on the theory that when those cattle reach the South St. Paul stockyards the State law applies to them, and they are liable to pay these gentlemen 2 cents per head for having the cattle weighed. That is what he is getting at. I can see how there is a disagreement and conflict.

Mr. McLAUGHLIN of Michigan. Well, it is a disagreement, of course.

Mr. TINCHER. It is a very serious conflict.

Mr. McLAUGHLIN of Michigan. I agree.

Mr. TINCHER. If you decide that you should let the State do that, you had just as well repeal this law.

Mr. McLAUGHLIN of Michigan. No; it is done under the supervision of the Department of Agriculture.

Mr. TINCHER. They lose any interest in doing it under the Department of Agriculture. If the Department of Agriculture stops them from charging money for that they won't have any interest in doing it.

Mr. McLAUGHLIN of Michigan. I do not think the Department of Agriculture ought to forbid a charge. It seems to me there ought to be a charge.

Mr. TINCHER. Why have a charge for it? The men that are buying live stock and the men that are selling it and the commission men, they have got to have a scale in the yard. The interstate shipper wants supervision by the Government; he does not want it by some State.

Mr. McLAUGHLIN of Michigan. It costs something to install the scales; it costs something to operate. He ought to pay for it.

Mr. CLAGUE. He has to pay for it anyway.

Mr. TINCHER. Yes, but how many salaried officers have you got in South St. Paul?

Mr. CLAGUE. I think it is around 30.

Mr. TINCHER. It is a pretty great bunch.

Mr. CLAGUE. No, it is small; it is, comparatively speaking, small.

Mr. McLAUGHLIN of Michigan. If the States want to do it, it seems to me it is none of our business. It seems to me the charges are proper, the services are necessary. I should insist, if the Department of Agriculture is doing it, that somebody should contribute to meet those expenses.

Mr. TINCHER. You lose sight of this proposition that the man who has got live stock to sell for meat can not sell it usually within his own State: he has got to ship it outside of his State. Now, then, if a man from Mr. Jones's territory down there ships live

stock to Chicago—which they do every day—why should he have to figure for a moment on dealing with some State organization charging him something for supervising and weighing his live stock?

Mr. McLAUGHLIN of Michigan. Well, if it is an interstate shipment it is right.

Mr. TINCHER. But the St. Paul shipments come interstate as well as State. They weigh everything that comes there, whether it is interstate or state. They charge you 2 cents a head for weighing it.

Mr. JONES. I think Mr. McLaughlin is right.

Mr. McLAUGHLIN of Michigan. I want to say that what I have said is altogether outside of this act or bill we are considering, because I believe if this bill should become law it would take out of the hands of the Secretary of Agriculture the right to supervise or direct in any manner these two particular propositions. I am talking now of the act as it is at present on the books and the authority it gives the Secretary of Agriculture.

Mr. JONES. Unquestionably I think Mr. McLaughlin's expression of that portion of it is correct, that the Secretary of Agriculture could utilize these State agencies by supervising them under the bill as it is worded, if he desired to do so. I do not agree that there ought to be a specific charge on the shipper of so much per head.

Mr. McLAUGHLIN of Michigan. Well, let the Secretary of Agriculture under his authority forbid the charge because it is unreasonable.

Mr. JONES. I think that is right.

The CHAIRMAN. Mr. Morrill, the first thing that the committee determined was that the Secretary of Agriculture should have exclusive jurisdiction over the stockyards and packers. Now the stockyard owners are required to do certain things. Under section 304 they are required to do certain things:

"It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard."

Now the definition of "stockyard services":

"SEC. 301 (b). The term 'stockyard services' means services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce, of live stock."

Now, then, you have the power, you have the jurisdiction to regulate these rates. Now, what is proposed to be done by the State now is to enjoin the stockyard owners from doing the very thing required to be done under this act, is it not?

Mr. McLAUGHLIN of Michigan. I would add right there that the Secretary of Agriculture is not asked or required to do any of those things. He is simply required to see that they are properly done.

Mr. MORRILL. I have taken the position in the administration of the packers and stockyards act that we were not required to do the weighing. That it was our duty, imposed upon us by the law, to supervise the rendition of services in the yards so that equity might be done to all parties at interest.

The CHAIRMAN. If you find it excessive you have the power to regulate the charge to be made.

Mr. MORRILL. Yes.

Mr. TINCHER. If I had cattle in the stockyards at South St. Paul for interstate shipment, and the State institution would say to me, "We have got scales; we will weigh your cattle and charge so much," I would have the right as an individual citizen of this country to say, "No, sir; there is a regulatory law; the stockyards are under the regulation of the Government, and one of the facilities they will furnish me is a weighing proposition."

Mr. McLAUGHLIN of Michigan. And wouldn't you say that the Secretary of Agriculture, under this act, would have the right to say to the State authorities the 2 cents—whatever the charge is—ought not to be imposed?

Mr. TINCHER. Certainly.

Mr. McLAUGHLIN of Michigan. And if the Secretary will permit any charge he could indicate what a reasonable charge would be.

Mr. TINCHER. Now what is the situation there to-day? As I understand from these gentlemen, the State people will say, "Come on here, we have got these cattle to weigh." The stockyards people will say, "We can not weigh your cattle, because we are enjoined by the State court up here from weighing cattle, because the State law provides that they shall be weighed by a State board." And there is a conflict between the two statutes, and I think that the Attorney General's letter is sound on that subject, because if a State can interfere with the enforcement of the law in that particular, the law would not have any standing at all.

Mr. McLAUGHLIN of Michigan. Do you agree with the Attorney General in saying that this is a delegation of authority from the Department of Agriculture?

Mr. TINCHER. No; here is where I think we differ on that; they are talking about, Mr. McLaughlin, not delegating the authority of somebody to do something for the Government, but the Government delegating the authority to a State board to do something under the law of the State which would absolutely——

Mr. McLAUGHLIN of Michigan (interposing). It simply permits the State to do the thing that it wishes to do if the Department of Agriculture thinks it is reasonable.

Mr. TINCHER. Well, I think he could take a State employee—and I do not think he has said anything in conflict with that—he could take a State employee and appoint him at a salary to do some work for the Government—weighing there, if he wanted to do that. I do not think there would be anything to hinder that. But suppose the Secretary of Agriculture should say: "So far as South St. Paul yards are concerned there will be no Government supervision up there, except the supervision offered by the State law."

Mr. McLAUGHLIN of Michigan. Oh, no; he could not do that.

Mr. JONES. It seems to me there is one other question in connection with this proposed law that I would like to ask Mr. Morrill while he is on the stand. Has the Department of Agriculture outlined any policy, or does it contemplate any policy, with reference to requiring bonds for these buying and selling agents?

Mr. MORRILL. Yes; we are working on that. Here is the situation. There is a difference in the policy in different markets as to the matter of bonding. Some markets require bonds; some do not. And there is a difference in the forms of bonds used at the different markets by commission men in protecting their shippers. In markets where there have been bonds required there have been failures and coincidentally the bonding companies themselves have failed, so that the shippers were not fully protected. In that connection we have taken the matter up with different agencies interested, for the purpose of ascertaining what would be a bond that would afford adequate protection, and what sort of regulations should be made in order to serve the shipper properly in that connection.

Mr. JONES. Then it is the intention of the department to require adequate bonds of the buying and selling agents in order to protect the shipping public?

Mr. MORRILL. Yes, unless another matter that we are working on should afford a solution for that question. We have in our audit of the books of a certain market found the condition of affairs that I have referred to, and have also found that certain commission firms were actually insolvent at the time of our audit, and we have corrected that condition. That brought up the question whether we should rely wholly upon bonds as a means of protecting shippers, because we found in both cases that the funds of the commission men were being intermixed with other funds devoted to other uses, and for that reason our general auditor at South St. Paul has been working with the various agencies concerned upon a plan for the segregation of the bank accounts of the sale of live stock, so that the only use that could be made of the proceeds of the sale of live stock would be to remit to the shipper and to pay the charges, including the commission man's commission.

Mr. JONES. But even then you would need some kind of a bond, would you not?

Mr. MORRILL. That is a question that is in our minds at this time. The thing has not been worked out in all its details, but we are working on it to see whether with that protection a bond is still necessary. If it will be still necessary I have no doubt we will require a bond.

Mr. JONES. This situation, it seems to me, might arise even if we had that supervision—of course that would be a valuable thing to have—that if the commission man or buying and selling agent should fail to comply with that provision there would be no way to protect the shipper.

Mr. MORRILL. I understand that.

Mr. JONES. And you ought to have at least a bond, even if you have the supervision.

Mr. MORRILL. If there would be left any loopholes in the plan of course we would have to require bonds. I am not deciding the question now, you understand.

Mr. JONES. I understand.

Mr. MORRILL. This is a matter that is being investigated, and if when it is worked out it will leave loopholes, we will have to require the bonds anyhow.

Mr. JONES. In other words, you are planning and contemplating and trying to arrange a system that will protect the shipping public in the disposition of the proceeds that arise from the sale of the cattle.

Mr. MORRILL. Yes. As a matter of fact, just a few days ago the East St. Louis Live Stock Exchange passes a rule requiring all of its members to make bonds, and in the middle of May we expect to meet with the representatives of all the exchanges

at Kansas City for the purpose of going into this question of the exact requirements that should be made with reference to the bonds.

Mr. PURNELL. Now, is it not the contention of the Department of Agriculture that if these several regulations that may be passed by these different bodies all over the country meet with the wishes of the Secretary of Agriculture, and seem to comply with the terms of the act, they may be approved and adopted as necessary regulations?

Mr. MORRILL. That would be all right if they will conform to the policy that is adopted.

Mr. PURNELL. It seems to me, as a matter of fact, we do not differ at all. Is not this the fact, that the Attorney General's letter is predicated upon the assumption that it is desired to delegate certain authority vested in the Secretary of Agriculture under this act to some other body? Now, all of us would agree, I think, that that could not be done, if you use the word "delegating"—and I do not believe an attenpt is being made to actually do that thing—but isn't this the contention of some of us who seem to disagree with the Attorney General, that he is not seeking to delegate authority, but merely to permit some other body or group or State or community to do certain things under the direction and supervision of the Secretary of Agriculture, rather than delegating any authority?

Mr. MORRILL. I think I should say for the Attorney General that the question was not presented to him that way, and could not have been presented to him in the way that you stated it, because the State was seeking to exercise its authority under a mandatory law of the State compelling the commission men and stockyards owners and other people to conform to certain requirements, and the question was whether the Secretary of Agriculture should permit those requirements to remain in effect.

Mr. PURNELL. Well, that was a conflict of authroity between the State and Federal Governments; that is now in the court, is it not?

Mr. MORRILL. It is in court; yes. But I am merely explaining the position of the Attorney General.

Mr. MCLAUGHLIN of Michigan. I do not see any objection to the Secretary of Agriculture permitting a thing to be done under the mandatory law of the State if the Secretary of Agriculture thinks it is reasonable and proper.

Mr. MORRILL. But there was no discretion on the part of the Secretary. He had either to accept or reject.

Mr. MCLAUGHLIN of Michigan. Oh, he had the discretion under the act.

The CHAIRMAN. It is now nearly 12 o'clock. What is the pleasure of the committee?

Mr. CLAGUE. I move that we take this matter up again on Thursday morning at 10 o'clock, and that we also take up the hearing on the bee bill at the same time.

(The motion was duly seconded and carried.)

The CHAIRMAN. Very well, this hearing will now stand adjourned until Thursday morning at 10 o'clock.

(Thereupon, at 11.55 o'clock a. m., an adjournment was taken until 10 o'clock a. m. Thursday, May 4, 1922.)

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Thursday, May 4, 1922.

The committee met at 10 o'clock a. m., pursuant to adjournment, Hon. Gilbert N. Haugen presiding.

Present: Representatives Haugen (chairman), McLaughlin of Michigan, Purnell, Voigt, McLaughlin of Nebraska, Riddick, Tincher, Sinclair, Thompson, Clague, Clarke, Jacoway, Rainey, Kincheloe, and Jones.

The CHAIRMAN (after informal discussion as to allotment of time). Judge Clague, who is your next witness?

Mr. CLAGUE. Mr. Chairman, Mr. Sydney Anderson is here. He is in somewhat of a hurry, and we would like to have you hear from him.

STATEMENT OF HON. SYDNEY ANDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA.

Mr. ANDERSON. Mr. Chairman, I do not wish to make any extended statement at all. I am here simply to express my interest in the proposed amendment, and I hope that the committee will favorably consider it. I have been interested too long in the regulation of the stockyards by the packers and their relations to the general public

to want to see anything done which would tend to weaken the law or its administration. I do not think this amendment would have that effect.

I think it is a wise policy, so far as it is possible and so far as it can be done consistently with the national policy, to permit local regulation of local affairs. There had grown up in Minnesota, prior to the passage of the Federal packers and stockyards act, a system of regulation of the stockyards. The people of Minnesota desire to retain a part of that regulation and to do it consistently with the national act. They desire to retain that part of it which relates to the weighing of the live stock and the bonding of the commission men, as I understand it. It seems to me that this can very properly be done without in any way weakening the effect of the national law.

As it is done in Minnesota, the weighing is a State function, performed by the State as an official act, which assures to the shipper as well as to the purchaser of the stock accurate weights, and removes all suspicion of the control of the scales or the weighing process by any interested party. It is desired that that part of the State regulation be retained, and I hope that the committee will find it possible to adopt this amendment in order that that may be done.

That is all I have to say, unless there are questions.

Mr. TINCHER. Mr. Anderson, you have examined this resolution, have you?

Mr. ANDERSON. Yes.

Mr. TINCHER. You live in Minnesota, of course?

Mr. ANDERSON. Yes; when I have a chance.

Mr. TINCHER. That is all I care to ask.

Mr. KINCHELOE. Mr. Anderson, can you conceive that some time cases might arise where there would be a conflict between the representatives of the State and the representatives of the Government in the question of the weighing of live stock and things of that kind?

Mr. ANDERSON. It is possible that such disagreements might arise, but I do not think this question ought to be decided on the basis of either the inconvenience or the annoyance that might be caused to the Department of Agriculture from it. As a matter of fact, the policy which is proposed here is not a new policy at all. It was adopted, in the first place, I think, in the water power act, in which we recognized the more effective character, from a local point of view, of local regulation. We recognized the right of the State to fix rates and charges, providing, however, that where the State failed to do so the Federal Government might do it. We also did the same thing in substance in the grain standards act. While there has been some conflict in the administration of that act, notwithstanding that fact the very relationship existing between the State and the Federal Government has, I think, resulted in greater consideration of the local situation than would perhaps have been the case if the Federal Government had had complete control.

Mr. KINCHELOE. I will say to the gentleman that I am very much in favor of State rights, but the point I wanted to get his idea on was this: If there should be a conflict of authority in the weighing of cattle, for instance, between the representatives of the State and the representatives of the Government, which would prevail?

Mr. ANDERSON. If the matter were an interstate matter, obviously the Federal Government would prevail.

Mr. KINCHELOE. And if it is intrastate, the State representative would prevail?

Mr. ANDERSON. I would imagine so. I have not gone into that as a legal question.

Mr. KINCHELOE. That is the idea I had in mind when I asked the gentleman the first question.

Mr. JONES. I am very much in accord with the gentleman's position in so far as the requiring of a bond is concerned, unless the Federal Government is going to require one. They seem to have that matter under consideration. I think a bond on the part of the buying and selling agent ought to be required for the protection of the shipper. If the bill as at present written is not so worded as to require that bond, I think some measure should be passed which would do that.

I am in doubt, however, as to the policy of the other phases of the bill which would permit a charge by the State authorities weighing when the Government may also maintain weighing facilities, or require the weighing facilities on the part of the stockyards.

Mr. ANDERSON. That is a very common practice, both in State and in Federal regulation. My recollection is that practically all of the declarations which have represented the farming opinion in recent months have declared for a charge for service rendered where the service was a service of value to the person to whom it was rendered by the Government.

Mr. JONES. That would be true if it was a service of value. But if the Federal Government maintains the facilities for weighing stock, and they require people who ship cattle from my section to yours, for instance, to pay for the weighing of the cattle

and if we at the same time permit your State, in addition to that, to require my people to pay for the weighing of cattle 2 cents a head, it seems to me it is something of a burden.

Mr. ANDERSON. Of course, I do not think it is intended or expected that there will be two charges made, one by the Federal Government and another by the State. As a matter of fact, as I understand it, as the Federal law now works out the Federal Government requires the stockyards to furnish the scales and to furnish weighers as a part of the facilities and services furnished by the stockyards. The charge is, of course, covered into whatever charge is made by the stockyards. It is paid in any event. Of course, in fixing this charge to be levied against the shipper, a corresponding consideration was given to the charges made by the stockyards for the same purpose.

Mr. JONES. Oh, yes; it ultimately has to be paid for by the shipper. The only question in my mind was whether it might be required to be paid twice under this amendment, worded just as it is. I think that if the Secretary of Agriculture has not that power already, it would be advisable to authorize him to utilize the State facilities and State buying agents. I am thoroughly in accord with you on the subject of bonding these fellows who handle the funds with which the stock is purchased.

Mr. TINCHER. Mr. Anderson, one of the objects of the packer bill was to enable the Department of Agriculture to regulate the charges at the stockyards. Now, take this case here that causes the introduction of this bill. The St. Paul Stockyards Co. owned some scales, and they maintained them, and they are inspected by Government inspectors. But under the law which you have up there the State does the weighing. These 34 or 36 State officers have an arrangement with the stockyards company by which they use the stockyards' scales, and they weigh the farmers' cattle, whetherthey are interstate or State shipments, charging so much a head. They all have their jobs there and stay around the stockyards. But we want Government supervision of those weights anyway, whether the State keeps that organization there or not, do we not—the friends of the packer bill?

Mr. ANDERSON. I have no objection to continuing the Federal supervision of the scales.

Mr. TINCHER. We do not want to repeal the packer bill in any part.

Mr. ANDERSON. Certainly not.

Mr. KINCHELOE. Is it your idea, Mr. Anderson, that if this amendment should be adopted this fee or payment for the weighing of stock would apply only to stock that came from Minnesota?

Mr. ANDERSON. I do not think so, under this amendment. I think it would apply to all stock coming into the yards. Of course that would raise the question of whether the charge was a reasonable one or whether it constituted a burden upon interstate commerce.

Mr. KINCHELOE. If it did not apply, do you not think there would be grave danger of the situation suggested by Mr. Jones in his illustration, that they would likely have to pay two charges?

Mr. ANDERSON. I do not think so; I do not see how it would be possible.

Mr. KINCHELOE. If the charge is fixed by the Federal Government that may be collected by the stockyards, would it not be in substance paid twice?

Mr. ANDERSON. I do not see how that would be possible, because I do not assume that the State administration or the Federal Government is going to be foolish enough to operate the system in cooperation and separately, which would result in paying twice.

Mr. CLARKE. Has there been any material loss to the cattle growers through the Federal supervision of, we will say, the weighing?

Mr. ANDERSON. I can not answer that question; I do not know enough about the details of it. There should not be, I think. I think it can be safely said, however, that a very large majority of the shippers in Minnesota at least very much desire the continuance of the system which has been established there and in which they have confidence.

Mr. SINCLAIR. And the other shippers of the Northwest are asking to have it continued.

Mr. CLARKE. If there is no material loss, why are they asking for this added burden? I can not see that there has been any real case made out of a loss to the cattle growers in these interstate shipments, and it would seem to me that as far as the intrastate shipments are concerned, you have your remedy there within your State. If you have not, you should get it.

Mr. ANDERSON. I am not sufficiently familiar with the operation of the stockyards act to comment on that. In fact, I do not think it has been in operation long enough so that anybody can have an opinion on that that is worth anything.

Mr. TINCHER. Really it has not been in operation; that is, it has been handicapped by the pending litigation?

Mr. ANDERSON. Yes. It certainly has not been in operation sufficiently long so that anyone can have a sound opinion on it.

Mr. CLARKE. There is a very wonderful piece of machinery that has been built up through the experience and evolution of the industry there. The great thought we all had in mind was putting it under one head, and certainly there is no finer, more sympathetic man in the world to have supervising it than Henry C. Wallace. I would hesitate a long time before tampering with the machinery as it is. That is just my own thought. Really I do not see that a case has been made out here by a showing of losses accruing to the producers of the cattle.

Mr. ANDERSON. I do not think the gentlemen who appear here have had an opportunity to make any such showing as yet.

Mr. CLARKE. Well, bring it on; let us have it.

Mr. CLAGUE. We have not had the opportunity yet.

Mr. KINCHELOE. Why is there any dissatisfaction with this present packer bill if it has not been in operation out there?

Mr. ANDERSON. It is not a matter of dissatisfaction with the operation of the packer bill at all; it is a matter of the retention of a system in which the people have confidence, which they have tried out, and which they know will work, besides their having the advantage of a local administration which is in sympathy with local conditions and understands them.

Mr. KINCHELOE. Don't you think that when this bill does become operative up there if there is not cooperation between the State and the Federal Government, if this amendment becomes a part of the law, then the Federal Government would not countenance these weighers of cattle in interstate commerce?

Mr. ANDERSON. I do not see why not.

Mr. KINCHELOE. If there is no cooperation they would not?

Mr. ANDERSON. Well, I assume there will be. I have sufficient confidence in the good sense of the Secretary to assume that there would be.

Mr. KINCHELOE. It strikes me that if this law has not yet become operative up there, and therefore they do not know whether it is going to be satisfactory or unsatisfactory, this proposition is somewhat premature.

Mr. CLARKE. Well, let us get at it. Instead of keeping it up in the realms of theory, submit a case here with the facts. Let us have several cases in which injustices have been done, and then we ordinary laymen can consider it intelligently. Give us the details.

Mr. ANDERSON. I offer no testimony on that subject, because I have none.

Mr. CLARKE. Well, let your friends do it.

Mr. CLAGUE. They can not all testify at once, Mr. Clarke.

Mr. ANDERSON. They were here before and are here now, and are ready to testify. But other gentlemen were brought here to testify and they did not have any opportunity. All I am asking for them now is an opportunity to do the very thing you are asking to have done.

Mr. PURNELL. Let us have some agreement as to how long this thing is going on and how the time is going to be divided.

Mr. ANDERSON. As far as I am concerned, I do not want to take any more of the committee's time at all.

Mr. KINCHELOE. Let me ask you this question—because I have great confidence in your judgment in these matters, by reason of your long experience. As a matter of fact, is this packers' law has never yet become operative in the stockyards up there, and therefore they do not know whether it is going to be satisfactory or not, don't you think this contemplated amendment is really premature?

Mr. ANDERSON. Oh, I think if you are going to retain the State weighing service at all it ought to be retained while it is there. Of course, if it goes out of existence as a result of the passage of this act it would be very much more difficult and perhaps very expensive to reestablish it.

Mr. KINCHELOE. But if the Federal packers' act proves highly satisfactory, then there would not be any need of this legislation?

Mr. ANDERSON. That seems to be perfectly obvious.

Mr. VOIGT. Don't you think, if there is to be any amendment of the national act that it should be simply framed so as to make it permissive with the Secretary of Agriculture to take advantage of the local facilities?

Mr. ANDERSON. I think that is a matter which the committee ought to decide. have no opinion on that.

Mr. RAINEY. Don't you think there is a strong likelihood of other States forming commissions similar to this one in St. Paul, if we give St. Paul authority to do the weighing?

Mr. ANDERSON. That is very possible.

Mr. RAINEY. And in that way there would be an additional charge above that which is now absorbed by the stockyards company?

Mr. ANDERSON. It might be that an additional charge would be involved. If the service is worth the charge, I do not think anybody should object.

The CHAIRMAN. How much more time is required?

Mr. CLAGUE. Well, Mr. Chairman, they took up most of the time in questioning the other day.

The CHAIRMAN. You control the time.

Mr. CLAGUE. I can not control these members who are asking questions, and I am not going to try to do so. These gentlemen can be through in an hour and a half if you will let them put in their testimony.

I will call Mr. Montgomery.

STATEMENT OF MR. J. S. MONTGOMERY, ST. PAUL, SECRETARY MINNESOTA LIVESTOCK BREEDERS' ASSOCIATION; MANAGER CENTRAL COOPERATIVE COMMISSION ASSOCIATION.

Mr. MONTGOMERY. Mr. Chairman, I do not come here representing the railroad and warehouse commission or any other department of our State. I come here as the secretary of the Minnesota Livestock Breeders' Association and as the manager of the Central Cooperative Commission Association, a farmer-owned selling agency at the South St. Paul market, which has for the past six months handled 25 per cent of the entire business of that yard, the business coming from Minnesota, North Dakota, South Dakota, and Wisconsin.

I want to say to you gentlemen that during the past eight months in which we have been operating, handling the business of over 600 cooperative shipping associations, representing about 50,000 or 60,000 live-stock producers, we have never had one man either verbally or in writing make any protest as to the charge made by the State of Minnesota for weighing their live stock nor as to the fairness and accuracy of those weights. That is the thing I want to get before you—to show you how the producers of live stock coming on to that market feel about this situation. They feel that the State weighing has been fair, that it has been accurate, and they are loath to dispose of it at this time and take on some other system that they know nothing about.

Mr. CLARKE. Would not the Federal Government have the advantage of all your experience? There is not any reason, is there, why they can not weigh just as accurately as the State of Minnesota?

Mr. MONTGOMERY. I might say that so far I have not seen them show any inclination to take advantage of our experience.

Mr. KINCHELOE. Is this Federal packers' law in operation in that stockyards?

Mr. MONTGOMERY. So far as I know it is. They have had a representative on that market for some five or six months. I do not remember exactly when he came there, but I know he has been there for some time.

Mr. KINCHELOE. I understood Mr. Anderson to say that it had not been in operation up there at all as yet.

Mr. MONTGOMERY. They have had a representative there.

Mr. PURNELL. What does he do?

Mr. MONTGOMERY. I can not tell you very definitely as to his duties. He has been there, and they have gone through the books and records of all the commission companies, checked their commission charges, and made complete records of our accounts sales covering the period of several months.

Mr. KINCHELOE. Well, he was examing your business, wasn't he?

Mr. MONTGOMERY. Yes, sir; and that of other firms as well.

Mr. KINCHELOE. What I mean is this: Has the Federal Government, to your knowledge, in any way taken over the supervision of the stockyards under the purview of this new law?

Mr. MONTGOMERY. They have had a representative there. He has issued no orders, so far as I know, expecting a few orders with reference to just how the accounts sales shall be rendered.

Mr. KINCHELOE. As a matter of fact, the Federal Government has not taken charge under this law, has it?

Mr. MONTGOMERY. I understand that they have; yes, sir.

Mr. KINCHELOE. Well, has there been any complaint of their supervision of it up there?

Mr. MONTGOMERY. Not any. But the fact remains that the State has continued to perform the function of weighing the live stock there, and the fact remains that our shippers do not care at this time to dispose of that.

Mr. KINCHELOE. If there is a charge for the weighing of the live stock there under this law, and then by the State, will not the shipper have to pay twice?

Mr. MONTGOMERY. I know of no reason why he should——

Mr. KINCHELOE. If there are two charges he will, will he not?

Mr. MONTGOMERY. Why should there be two charges? I am not an attorney, you will understand, gentlemen, but as I understand this bill the Secretary of Agriculture is given authority to cooperate with the State agencies. And I see no reason why he can not cooperate with the State agency which we have established and which has functioned there for three years, and give these shippers satisfactory service in the weighing of live stock.

Mr. KINCHELOE. But suppose he does not?

Mr. MONTGOMERY. If he does not, our shippers would not be willing at this time to do away with State weighing until they are satisfied that he is going to put in something that is equally good. They would rather pay two charges and know that they are getting the fair weights that they have had for the last several years.

Mr. KINCHELOE. But you do not know yet but what the system the Federal Government is going to put in under this law will be highly satisfactory?

Mr. MONTGOMERY. That is very true.

Mr. PURNELL. Suppose the Federal Government should decide they had the authority to delegate this power to your present system and should use it. Would you be satisfied with that?

Mr. MONTGOMERY. I think, speaking for our shippers, that they will be satisfied with any system that will give them the same service that they have had under State supervision for the last three years.

Mr. PURNELL. Suppose they had the same service exactly, except that the supervision of it is transferred to the Federal Government rather than the State authorities?

Mr. MONTGOMERY. I do not believe our shippers would have any serious objection to it.

Mr. TINCHER. Mr. Montgomery, you have described yourself as a representative of certain farm organizations. As a matter of fact, you have a commission house at St. Paul, have you?

Mr. MONTGOMERY. Yes, sir.

Mr. TINCHER. And you run that commission house?

Mr. MONTGOMERY. I do.

Mr. TINCHER. And you receive shipments of cattle?

Mr. MONTGOMERY. We do.

Mr. TINCHER. And charge a commission of so much a load for those cattle?

Mr. MONTGOMERY. We do.

Mr. TINCHER. And pro rate your profits back among the membership of your cooperative association?

Mr. MONTGOMERY. Yes, sir.

Mr. TINCHER. Now then, you have a carload of cattle in your yard. You take them there and weigh them on a set of scales. Those scales belong to the stockyards company?

Mr. MONTGOMERY. As I understand it, they do; yes, sir.

Mr. TINCHER. Your State has no scales?

Mr. MONTGOMERY. They have none.

Mr. TINCHER. And cattle are weighed over the identical scales that they would be weighed over if the stockyards company furnished the weights to the shipper, as they do at Chicago, Kansas City, Omaha, St. Louis, and all the other markets?

Mr. MONTGOMERY. Yes, sir.

Mr. TINCHER. Well now, the controversy here is this. It is a question of whether the Department of Agriculture shall say to the State authorities up there, "You keep on supervising these weights; we won't supervise them; we will have nothing to do with it; we will turn that over to you. You make a charge of 2 cents a head for cattle and a cent and a half for hogs," or whether they will go ahead and handle that the same as they will at other places.

I am not unfriendly to your State organization. I think your State deserves great credit for this, that your State started in passing laws to try to cure the evils of the livestock proposition. But we have put up to the Department of Agriculture here now the proposition of reducing the expense at those stockyards to the farmer, and there

should not be any conflict of authority there that would interfere with their effectively doing that. You are maintaining out there a good many men in your State organization. Your income is—how much a year?

Mr. MONTGOMERY. I do not know; I have nothing to do with that.

Mr. CLAGUE. $66,000.

Mr. TINCHER. Something like $66,000 a year you collect for these weights, and the State expends that for salaries at the St. Paul yards.

Now, it ought not to be a very difficult proposition, from what little I know about the weighing of live stock in shipping, for the Government, under the proper inspection of those scales, which must be by the Government officials whether the State has anything to do with it or not—because I might ship to St. Paul; there may be many interstate shipments there, and the scales must be properly inspected. It seems to me you are working up a conflict of authority there. What reason have you to believe that the shipper that ships stock into the St. Paul yards would have any better treatment if you continue the operation there with these 30 State employees, with a direct charge upon the producer of live stock, to see to it that he gets a fair deal on his weights on the stockyards companies' scales?

Mr. MONTGOMERY. I have just this reason—if you will allow me to answer?

Mr. TINCHER. Certainly.

Mr. MONTGOMERY. The reason they propose to let the stockyards company operate these scales is this. Our State found when they went in there that there was not an accurate scale in the yards. That is the reason I assert that if they give us the same service that our State gives it will be necessary for them to build up an organization, placing a man at every scales, and you can not reduce expenses any more than the State has already reduced them.

Furthermore, you brought up the question of reducing charges at that yard. The Federal Government have had a man there for five months. Our association has been operating on a commission charge of $2 less per car than the old line commission firms, and we have shown that in doing that we could lay aside 50 per cent of our income, and they have not done anything to lower commission charges.

Mr. TINCHER. Well, they ought to lower yours right away.

Mr. MONTGOMERY. All right; we are perfectly willing that they should do so.

Mr. TINCHER. Wait a minute. Of course you have some little advantage over the old commission companies?

Mr. MONTGOMERY. I realize that.

Mr. TINCHER. It takes just about so many men to run a commission company?

Mr. MONTGOMERY. That is correct.

Mr. TINCHER. So many men can handle 20 cars of stock just about as easily as they can 5. That is, the expense is just about the same. If you are making too much money, I think the Federal Government should interfere. It is somewhat like a farmers' elevator. If they are going to regulate that, I thoroughly agree with you that they should cut down your general charges.

Mr. MONTGOMERY. It is perfectly agreeable to us. Any time they see fit to do so, we can stand it. But I want to say this, that so far as any profits are concerned, any profits that we make go back to the men that pay the money in to us.

Mr. JONES. Under the law as it has been passed the Secretary of Agriculture may require the weighing of stock under the activities of the Federal Government. Now, let us assume that he does that. Then if you adopt this amendment, that nothing in this act shall be construed to prevent the State appointing and paying weighers of live stock in commerce, you could charge a shipper from Texas or from Kansas to your State, to your stockyards, 2 cents per head, and the Government could also charge them for their weights, and you would have a double charge.

Mr. MONTGOMERY. I realize there is a possibility of a condition of that kind, but I would not recognize that there is any probability of it arising.

Mr. JONES. Well, if you people are so wedded to your State weighing and to the privilege of charging for the weighing and supervising the weighing, if the Federal Government saw fit to undertake it also, might not your people say, "Well, we have got the right under the law as enacted to maintain our system and make the charge, and we will proceed anyway and do this further thing and make this further charge," and the shipper have levied upon him the additional burden of that charge?

Mr. MONTGOMERY. As I understand it, your Federal law gives the Secretary of Agriculture authority to supervise and fix charges within reasonable limits. I think that if he found the State charges were not within reasonable limits he would possibly have authority to regulate them.

Mr. JONES. But with this amendment I think there might be a double service, and both charges might be reasonable. But why have two weighings and two services? If he found it necessary to establish a system and permitted charges, then he

would be hog tied by this amendment, so that he would be compelled to let you people also weigh, or supervise the weighing, and make a reasonable charge for that service, and both charges might be reasonable, and yet both charges combined might be too much.

Mr. MONTGOMERY. Can you conceive of a condition in which the Secretary of Agriculture would step in there when he is satisfied that the State service being rendered is accurate? If it is not, there is no question but what he has authority to see that it is rendered, because he has supervision over those whole yards. It seems to me the duty is placed upon him, regardless of whether the stockyards is doing that weighing. He is given authority to supervise it anyway.

Mr. JONES. I know he is given authority to supervise, that is all right; he would have to do that anyway. But he might find it necessary to go ahead and do it all, and the State might get uppish about it and insist on doing it itself.

I am in thorough agreement with the idea that there should be a bond required of these buying and selling agents for the protection of the people whose funds they handle. Now, if the policy is not going to be adopted by the department, as it was intimated yesterday it would be, I think we ought to amend the law so as to require either the State or the National Government to require in turn of the buying and selling agents the giving of a bond to protect the shipper in the sale of the cattle.

Mr. MONTGOMERY. I agree with you on that point absolutely. I believe that whatever other safeguard is placed around it, every commission firm ought to give a bond to protect the shipper.

Mr. TINCHER. I think there is a better security for the shipper than a bond.

Mr. MONTGOMERY. Possibly that is true; I hope you will find it.

Mr. TINCHER. I think the Department of Agriculture's plan for security to the shipper is far better than your bond system that you have tried on your market. The chances are that a lot of the bonds were signed by the stockholders of the company. That has not been satisfactory in the past, and it will not be satisfactory for the future. I think the Department of Agriculture is to be commended upon the fact that they are working out a system of absolute security to the shipper.

Now, then, suppose this situation should occur. Suppose your law up there should be held by the courts, when they finally pass on it, to be void. Then we would have to suspend until you passed a valid one. Your law has not yet been passed upon by the courts, has it?

Mr. MORRILL. I might interject that it has, by the supreme court of the State.

Mr. TINCHER. Well, your supreme court up there might hold it constitutional, but is not the question of the constitutionality of the law pending now in the Federal Court?

Mr. MONTGOMERY. I do not believe the question of constitutionality is.

Mr. VOIGT. Was not your law held constitutional by your supreme court before the Federal law was enacted?

Mr. MONTGOMERY. I believe it was.

Mr. TINCHER. That is, only so far as it pertains to intrastate shipments. The question of whether or not you can levy these charges on parties shipping through there is a question yet to be determined.

Mr. MONTGOMERY. I realize that there may be some legal question as to the making of charges on interstate shipments. As I say, I am not an attorney, and I am not competent to pass on that.

Mr. TINCHER. That feature of your law has never been upheld, has it?

Mr. MONTGOMERY. I do not know whether the question of interstate shipments was involved when the law was upheld by our State supreme court or not.

Mr. TINCHER. It probably would not have been tried in the State courts.

Mr. MONTGOMERY. The members of the commission who are here can give you better information on that then I can.

Mr. KINCHELOE. Looking at this question from the standpoint of a Member of Congress, if the Congress should adopt this amendment it is going to apply to every State in the Union that has any stockyards. Congress has gone along for many sessions, for many years, attempting to pass a bill to control the packers and stockyards of this country, which they have finally done. This bill has not become operative in your yards as yet. Now, since it has not become operative, you do not know but what it is going to be highly satisfactory. It may be absolutely satisfactory to every shipper that ships cattle there, whether from the State of Minnesota or from any other State in the Union.

Now, in view of the fact that the law has not yet become operative, and in view of the further fact that it is going to apply to every State in the Union, why should Congress anticipate the dissatisfaction of the shippers that come to your yards there by passing this amendment? Should not Congress wait until this law becomes officially

operative? Then if it is not satisfactory to your shippers you people can come down here and point out any respects in which it is not satisfactory.

Mr. CLAGUE. But, Mr. Kincheloe, it is as operative there as it is in any other yard in the United States. Mr. Morrill will tell you that at Omaha they only have two men, a supervisor and an assistant, to look after the whole yards.

Mr. KINCHELOE. I understand that, Mr. Clague. But in view of this suit that was pending in the courts and very recently decided by the Supreme Court, I take it that the Secretary of Agriculture has not organized under this law. He did not know whether the stockyards proposition was going to hold or not until the other day, and I can imagine that a prudent Secretary of Agriculture was not going to take any action at all.

Mr. TINCHER. Let me get your theory of the proposition. The State has a man at every scale in the St. Paul yards?

Mr. MONTGOMERY. Yes, sir.

Mr. TINCHER. Well, now, the continuing of that system by an act of Congress would be notice to the Secretary of Agriculture that in the enforcement of this law in the Chicago yards and in the Kansas City yards he would have to put a man at every scale to watch the weights. I say that a supervisor appointed by the Secretary of Agriculture to supervise the yards, if he is worth a snap of the fingers, will know every night if there is any crooked business going on around the yards. It seems to me it is the worst kind of baby talk to say that it is necessary to put a man at every scale all over the United States to watch the weights of live stock. There can be a system evolved that will absolutely guarantee to the shipper fair weights without any such expense.

Here is another thing. There is no one in your State that has any serious doubt that the Supreme Court will hold this law of yours to be void so far as interstate shipments are concerned, in the light of rulings that have been made in cases similar to it in adjacent States. I think it is generally conceded that when the Supreme Court comes to this law they will hold it void.

Mr. MONTGOMERY. I can not answer for the judgment of other people as to what the Supreme Court may do——

Mr. TINCHER. Well, that is the comment, is it not?

Mr. MONTGOMERY. I have not heard much talk concerning it.

Mr. TINCHER. When the case from one of the Dakotas was decided they practically settled this question without having this law before them—as to the validity of this act, so far as it applies to interstate shipments.

Mr. MONTGOMERY. I do not care to take any more of your time, Mr. Chairman, unless there are further questions.

Mr. CLARKE. Have you any concrete facts to present to us here that will show injustice anywhere? Are you not just crossing a bridge before you get to it?

Mr. MONTGOMERY. I have simply these facts to present to you, that so far as the business we are receiving is concerned we have not had a protest regarding the State weights, that our people are absolutely satisfied——

Mr. KINCHELOE. Well, let us grant that under the State supervision it has been and is now absolutely satisfactory. Let us concede that. Here is this packer law that has not come into operation in your stockyards, or, I presume, in any other stockyards in the country. Suppose it proves thoroughly satisfactory. If it does, then why should there be a State representative there and a Federal Government representative, which makes it highly probable that the shippers will have to pay the cost of both of them?

Mr. MONTGOMERY. I want to say, in fairness to the Federal Government, that I am mighty well pleased with the man they have at the South St. Paul yards. I think they have a very high-class man out there. But I do not feel that the provisions of the Federal act give them the authority to go as far as our State has gone, and our shippers in that territory do not feel that they should go backward 10 years simply because the other markets have not come up to the mark. That is the whole situation.

Mr. CLARKE. Your State can only go so far, locally, as it relates to intrastate shipments. Certainly they can not go further in relation to interstate shipments.

Mr. MONTGOMERY. And that is the reason we are before you gentlemen at the present time.

Mr. JONES. This amendment would give them authority to go further.

Mr. SINCLAIR. The difficulty will be that when it gets into the Federal courts they will declare that everything is in interstate commerce, just as they did in the North Dakota grain grading case. There we had worked out a system of local grading of grain. The matter went into the Federal courts, and they have ruled that every bushel of grain that is grown in that State is in interstate commerce, whether it goes into interstate commerce or not.

Mr. KINCHELOE. Don't you think Congress ought to wait at least long enough to see whether the packer act is going to be satisfactory or not?

Mr. SINCLAIR. I say that Congress has before it the biggest question it will ever have to contend with, and that is to determine what is interstate commerce and what is intrastate commerce. The business of the country is getting so interwoven that it is going to be awfully difficult to say what is and what is not. But I say that all the time you are taking away from the several States local self-government every time you decide on legislation such as the packer act and many other bills.

Mr. TINCHER. The Supreme Court said on Monday that the stockyards and these traders and these commission men were in interstate commerce.

Mr. SINCLAIR. Yes; they are in interstate commerce. They said the same thing about the grain dealers and about the flour mills. They are in interstate commerce. There is not any intrastate commerce at all.

Mr. CLAGUE. Mr. Chairman, I will ask you to hear Mr. Green, of Minnesota.

STATEMENT OF MR. H. M. GREEN, LAKE CRYSTAL, MINN.

The CHAIRMAN. Mr. Green will you kindly state for the record, your occupation?

Mr. GREEN. Mr. Chairman, I am a farmer; I have been a farmer for 70 years.

Gentlemen, I did not expect to be called upon at this stage of the proceedings, but inasmuch as I have been I take great pleasure in saying to this committee that I consider it no common honor to be called upon to address a committee which has to do with a business which George Washington described as the most noble pursuit of man.

I want to say to you gentlemen at the outset that I have not only been a farmer for 70 years but I have been a shipper 50 years. Over 50 years ago I commenced shipping live stock, and I have been in the business almost constantly from that day until this, to a larger or smaller extent. And during all these years, I believe, gentlemen, it has been my observation and experience that there has been a growing demand for the same law that we are here to-day to consider.

The farmers of this country have been dissatisfied more or less during all these years, and that dissatisfaction has been growing and growing and growing, until the last few years when the control of almost every class of business has come into question. There has been growing a greater demand for legislation along the line of regulating the stock yards, live-stock shipments and live-stock weights, as well as grain weights and shipments.

I want to say to you gentlemen—though perhaps it may not be in good grace on my part—that I have been the author of these stockyards bills. And I want to say to you that the reason I was the author of these bills was not because I was a politician, not because I desired to go to the Minnesota Legislature, not because I desired to make myself prominent in any way in politics, but because the people of my State and the people of the whole Northwest demanded just what we are here to-day considering. It took us three sessions of the Minnesota Legislature to get the members of the legislature interested in this legislation, and I want to say to you that the pressure brought to bear upon me as a representative from a district that had large shipments of live stock was one of the reasons why I took it upon myself to be the author of these bills.

And while I am on that question I want to outline to you very briefly some of the reasons why the farmers of the Northwest demand just this legislation—not particularly the weighing of live stock; I will not single that out. I just want to read to you a list of some of the principal reasons why the farmers of the Northwest demanded stockyards regulation:

In the first place was the buying of stock at the stockyards; inspection of hog scales; keeping scales in repair; prices of corn and hay fed to stock; cost of yardage of stock commission paid to commission men; feeding hogs in troughs. I wish I had time to take up each one of these separately, gentlemen, and go over these particular reasons why the farmers have asked for this legislation, and show to this committee the things that have been brought to bear upon the Legislature of Minnesota in connection with the passage of these bills:

Weights of hay at stockyards fed to stock; weights of corn fed to stock; handling of crippled and dead animals; the selling of dead animals; the care and protection of stock in stockyards; sanitary conditions; the providing of bonds for the protection of shippers.

Now, gentlemen, every one of these particular complaints that I have mentioned here was presented to the members of the Minnesota Legislature and carefully considered before any legislation was framed or before any attempt was made to regulate the stockyards of the Northwest. Now, we have here a gentleman who comes here from our shipping yards at South St. Paul. I want this committee to understand

that this shipping association, which was formed about eight months ago, was organized under a provision of the last session of the Minnesota Legislature. You will understand that all of the charges that are made by this shipping association to the farmers of the Northwest for the shipping of their stock, from Minnesota, from the Dakotas, from Montana, Canada, and every other section—all of the surplus money that they take in, after paying expenses, is given back to the shippers who have patronized this shipping association. Bear that in mind. They are not up there for the purpose of making money; they are there for the purpose of giving satisfaction to the farmers, and the farmers get back every cent that is not required to pay the actual running expenses of that shipping association. Bear that in mind, gentlemen.

Now, the farmers of the Northwest feel this way. They raise their live stock. They drive it to the depot. They weigh it on scales that are furnished by a railroad company. They ship it to South St. Paul in a car, the rates for which are made by the railroad, with the Railroad and Warehouse Commission's sanction. They unload their stock at the stockyard's chute. They pay the charges that the stockyards companies say they must pay. They put their stock in the pen, and they pay for the corn and the hay that the stockyards company makes the price on. They have nothing whatever to say about the charges. Then the stock is handed over to a commission man, who charges whatever commission he sees fit to charge, regardless of what that commission may be.

And by the way, I desire to say that it will be shown here in this hearing, if you will give us time, that the charges made at South St. Paul for selling live stock have been so large that the Railroad and Warehouse Commission have seen fit to issue an order reducing the charges, which the commission men of South St. Paul have absolutely refused to obey. The fact is that the commissions charged by this firm have been from $2 to $3 a car less, and on top of that they propose to refund nearly half of the charges that have been made.

Mr. CLARKE. May I interrupt you there a moment. That being so, would it not be natural that all the shipments would flow to that association?

Mr. GREEN. Gentlemen, for the very same reason that I gave to a man that I met on the train day before yesterday on my way to this city. The question came up why I was not patronizing this firm. I have been a shipper for many years, although I have not shipped very many cars this year. I told him the time was coming, and not very far distant, when I would patronize them, but the trouble was this. You gentlemen will pardon me for taking your time, but we can not explain these things without taking time.

The reason I have not patronized this firm up to the present time—it has only been running eight months—is this. This gentleman here is a stock raiser. Another gentleman on the committee may be a stock raiser. They know the situation. A man ships to a certain firm for 40 years, or 10 years, or 5 years. He becomes acquainted with those commission men. They have treated him squarely, and he hates to break away from them.

Mr. TINCHER. We lose sight of the $12.50 commission because we are in love with the man and think he gets us so much better prices for our stock than some other man.

Mr. GREEN. Yes. But, gentlemen, that is no excuse whatever. This commission firm is doing business along this line. And in answer to this question I want to say that we should all patronize commission firms of this kind. But it takes time. We can not all break away at once. We can not all give them the cold shoulder in one day. It comes by degrees. It is acknowledged all over the stockyards of South St. Paul, and I think everywhere else, that they make less charges, they give a square deal, and they give a rebate on what is left after the charges are paid, and so on.

Mr. KINCHELOE. Well, I think that if you did all break away at once it would have an excellent effect on these other fellows by making them reduce their prices.

Mr. GREEN. Yes; and they did reduce the prices not over two months ago, because this firm had reduced the price and was getting the business.

Mr. TINCHER. We are all selfish when it comes to shipping our own stock. It is not the $12.50 commission. The shipper generally knows some fellow that is connected with some commission company, and he has great confidence in the fair treatment he will get in the matter of price. You see, you are not there, and you have to trust them to sell your stock to somebody at a fair price.

Let me suggest something else to you. I think you are to be commended for accomplishing in 3 years in the State of Minnesota what it took Congress 30 years to accomplish for the United States. I think your legislative career is a remarkable one and is deserving of great commendation. But you will admit this, that the live-stock growers or the whole Nation were deserving of consideration the same as you folks up there. For 30 years there was a clamor for this legislation in a national way that you have up there in your State. My State passed a law 15 years ago along the same

line that you have described in an attempt to cure those evils. It was held unconstitutional, because of the interstate commerce feature of it; it was knocked out by the Federal court of Kansas.

Now the National Congress has passed a law, a Federal law. We had hearings here, some 10 volumes, covering over two years, and we had testimony of witnesses before several committees of Congress disclosing that those very things were complained of. Now we have enacted a law which has been upheld by the Supreme Court which has for its purpose the correction of those very evils, along with hundreds of others. Now, I am sure that you, having given this matter the study that you have, would not want to do anything that would weaken or have a tendency to discourage the enforcement of that law in any way.

Mr. GREEN. Gentlemen, in answer to that, I do not consider that this bill would in any way weaken the Federal law. On the other hand, gentlemen, I contend that it strengthens the Federal law for this reason. The question has been raised in our country, in various sections of the State and by various people, that there might be a conflict between the Federal law and our law and that the two did not harmonize. It was stated at a hearing that Mr. Morrill held in South St. Paul not long ago by speakers upon the floor of the House that they had no objection to State control, but they did not see how they were going to harmonize State and Federal control. I think this bill is just what does harmonize State and Federal control, because it specifically says that the State shall have the power to compel the commission men to be bonded and shall have the right to weigh this live stock. That has been the whole question. That was the question at this hearing that Mr. Morrill held.

Mr. TINCHER. Well, that power to require a bond ought not to be given to both, ought it?

Mr. GREEN. Then put an amendment in your Federal law delegating it to the State.

Mr. TINCHER. The biggest live stock market in the world is in Chicago, is it not?

Mr. GREEN. It is, but it will have to take off its hat to us some day. [Laughter,]

Mr. TINCHER. Well, suppose we delegate that power to the States. Both must not have it; that is, the commission men must not be required to give two bonds. Now, if we delegate that power to Illinois, Illinois will not do it. Then the law fails, because the biggest market in the world has no provision for it.

Mr. GREEN. That seems to be the dominant question before this committee. If the Federal Government would not have the right under this law and under this amendment would not have the right, delegate that right to the State.

I did not quite finish my statement, Mr. Chairman, regarding the reasons the farmers were dissatisfied. They come, as I said before, to the stockyards with their stock. They pay their charges at the stockyards. They pay their charges for hay and grain, which charges are made by the stockyards company. They pay the yardage charges. They pay all of the charges made by the stockyards company. They pay the commissions charged by the commission men, in which the farmer has no voice. And then what do they do on top of all the rest? We are at a loss to find in the Federal law any provision that the commission man who sells our stock would be compelled to take out a bond to secure us along that line.

Mr. JONES. In this hearing that you had up at South St. Paul was the question of a bond discussed?

Mr. GREEN. I do not think it was.

Mr. JONES. You think it is necessary, do you not, that the buying and selling agents be required to give a bond in order to protect the shipper?

Mr. GREEN. I do.

Mr. JONES. The inspection to see that they are solvent concerns is important, of course, but even then the best institutions in the country require the bonding of their men where they handle trust funds or anything like that.

Mr. GREEN. Yes, sir.

Mr. TINCHER. Don't you think that in addition to that, under the general power given in the act, to require commission companies, instead of a bond——

Mr. JONES. Not insteadof a bond.

Mr. TINCHER (continuing.) In addition to the bond, there should be a regulation by the Department of Agriculture that they shall pay me my money for those cattle, and not mix it with their own money and check on it in the bank to buy cattle for themselves?

Mr. JONES. The way you worded your statement the last time, yes. The way you worded it the first time, "instead of a bond," I do not agree with you. Even with that regulation, the man who received $50,000 as the proceeds from the sale of the stock might abscond with it.

Mr. TINCHER. It has been very evident that the Department of Agriculture was going to do that one thing, if nothing more.

Mr. JONES. The intimation was made here yesterday that they might adopt this measure in lieu of a bond. You can not get any kind of inspection that will take the place of a bond.

Mr. GREEN. Now, gentlemen, I am sure you are going to shut me off in a few minutes——

The CHAIRMAN. No, indeed. We are not going to shut you off at all.

Mr. GREEN. I can not tell you half of what I have got to say, but I want to say along that line——

The CHAIRMAN. In that connection let me suggest that these matters you have referred to are matters over which the Secretary of Agriculture has been given jurisdiction. He has the power to regulate all of the things that you have objected to. Now then, the question is, will you trust the Federal Government, or have you greater confidence in your State officials?

Mr. GREEN. We have confidence in the State regulation, Mr. Chairman.

The CHAIRMAN. Over the Federal?

Mr. GREEN. Yes, sir.

The CHAIRMAN. That may be true as to Minnesota, I am not going to dispute that, but is it true throughout all the country? We have to take in all the country, all of these stockyards, St. Paul, Chicago, Omaha, and the others. Should we not trust to the integrity of the Federal Government as much as to that of the various States?

Mr. GREEN. I do not want to take up your time on that question. I would like to talk an hour on it——

The CHAIRMAN. I have nothing but praise for your organization in your State, but there have been complaints as to the acts of officials in your State as well as in other States. None of them are infallible. They are liable to err.

Mr. GREEN. Just a moment, Mr. Chairman, while I happen to think of it. The question was raised here a few minutes ago regarding the harmonizing of the Federal and the State laws, and I contend, as I have already stated, that this bill does harmonize the Federal and State laws.

The CHAIRMAN. But have they not already been harmonized? It is just a question between you and the department. If the department is willing to do what you are asking for, it has the power now and can go ahead and accomplish the very thing you desire.

Mr. GREEN. Maybe I am mistaken, but my recollection is that in our hearing day before yesterday it was contended here that the Federal law was not clear on the question whether the Federal Government had any control over the weighing and bonding.

The CHAIRMAN. Oh, they absolutely have.

Mr. TINCHER. I have not heard any claim of that kind.

The CHAIRMAN. And they must exercise it. You must give the Department of Agriculture credit for correcting a lot of these evils. They have been inspecting the scales and checking up the weights. You must give them credit for accomplishing a great deal along that line. I believe much credit is due your State also.

Mr. KINCHELOE. Now, let me ask you about this amendment. Let us look at this through a national lens and not through any State lens. As has been said by several of these gentlemen, I think your State deserves a great deal of credit, and your law may be satisfactory. But if Congress adopts this amendment it is going to apply to all the States. Now, let us concede that your State has a satisfactory law and it is working satisfactorily to all the shippers of your State. But as Mr. Tincher said a while ago, the biggest stockyards of the country are located at Chicago. Now, suppose the Illinois Legislature does not pass this remedial legislation that your State has passed. Suppose Missouri does not do it. Suppose Nebraska does not do it, and that the other big States in which are located these stockyards do not do it. Suppose those legislatures do not pass any remedial legislation along this line at all. Do you still contend that this would be better than a national law making them all do it?

Mr. GREEN. I contend this. The question was asked me about Federal control, whether it would be satisfactory or not. Gentlemen, all during the war we had Federal control of our stockyards. Did they do anything? Did they attempt to do anything? I stand here defying the challenge that the Federal control during the war at the St. Paul stockyards took any action or assumed any authority or attempted to do anything that would regulate the stockyards at South St. Paul.

The CHAIRMAN. Well, the department's representatives are here and can answer that. I know they did at Chicago.

Mr. GREEN. I was here a year ago and asked permission to come before this same committee on the question of putting in an amendment to the Federal law before the bill was passed exempting Minnesota. You did not see fit to do it. Now, that is all

right; we have no fault to find with you because you did not do that. But we come here now, asking you not to exempt Minnesota, not to pass any bill that will confer any special privileges upon the State of Minnesota, but to pass a law that will be applicable to every State in the Union and that will give every terminal stockyards in the Nation the same privileges that we have, which this bill does, and harmonize the entire series of legislation.

Mr. KINCHELOE. How will it harmonize it if the State of Illinois does not pass some legislation?

Mr. GREEN. Well, if they do not, that is up to them.

Mr. KINCHELOE. I am looking to the interests of the shipper, not of the stockyards. I am talking about the people who ship the stuff there to the stockyards in a State where the legislature has passed no remedial legislation at all. How are those shippers going to fare there?

Mr. SINCLAIR. You do not contend that this bill will destroy the control by the National Government in those States that do not pass laws the same as Minnesota?

Mr. KINCHELOE. No; but I contend that if this becomes a law it will put a double charge on the shipper, if the Federal Government sees fit to enforce its authority.

Mr. JONES. The point Mr. Kincheloe is making is this, I think, that in view of the fact that all the States probably will not establish laws such as you have, the Federal Government will find it necessary to establish a system requiring all these things. If they establish a system they must make it uniform. Having done that, if your State goes ahead and also establishes, or maintains, a system already established, might it not be a duplication of the activities of the Federal Government? And you have so worded this amendment—I understand you to say you drafted a part of this provision——

Mr. GREEN. No; it is not mine.

Mr. JONES. You have so worded it that notwithstanding the Federal Government may have established a uniform system, applicable alike to all the States, your State authorities may establish a system and charge 2 cents per head for all the cattle shipped in your State. And not only in your State—it would not be objectionable if you applied it only to the intrastate shipments, but you make it apply to cattle originating in my State of Texas, and cattle from Kansas and various other States.

Mr. GREEN. Gentlemen, just in answer to that: Our hearing at South St. Paul was a hearing open to everybody from every State in the Union. Notices were sent out promiscuously all over the country that that hearing was going to be held. I have the report of the meeting right here. Now, gentlemen, all the objection that they could drum up—and believe me, they attempted to drum up all they could——

Mr. TINCHER. Whom do you mean by "they"?

Mr. GREEN. The South St. Paul Commission Co. and the South St. Paul Stockyards Co. were interested in drumming up all the objection they could to the State control proposition. That is admitted by everybody; even the honorable gentlemen who appear here for the United States Government will not deny that.

It was an open meeting, for everybody to come in and express themselves. And there was but one man, Mr. Simonson, from South Dakota, who appeared before that committee—and he did not appear before that committee in any capacity except the position that he held, not as a private shipper, not as an individual who was interested in live-stock shipping. And when I got up on the floor of that house I asked him if he had ever considered for one moment, or his shippers, what they got back for every dollar they paid out for weighing, Mr. Simonson, from South Dakota, never opened his head to answer my question and never said another word during that convention.

And I want to say to you, gentlemen, that we challenge anybody to make the statement that there is any material objection to the provisions of this weighing proposition by anybody that ships stock to the South St. Paul stockyards. Here is a gentleman who has just testified. He represents some 60,000 shippers, if you please. I challenge anybody who may be here in opposition to this bill to bring one man before this committee who can produce any list of people who have ever objected or do object to-day to the system that we have in South St. Paul for weighing.

Now, when they only bring one man to a great hearing like this—and by the way, gentlemen, I would like to take time, but I shall not do it, to read to you what the South St. Paul reporter—not the stockyards reporter but the man who was there to report the proceedings of that meeting—said in regard to this matter. He comes out here with great big headlines (exhibiting a copy of a newspaper) and says "$80,000 is paid by the farmers for weighing live stock at South St. Paul market." There never was a grosser misstatement made by any man in the world. They do not pay $80,000 for all the supervision at South St. Paul.

Mr. TINCHER. As a practical business man and shipper of long experience, what do you think about the necessity of any supervision, whether it be State or national,

requiring a man to be at each scale to supervise the weighing of each draft of live stock?

Mr. GREEN. I do not understand that we keep a man at each scale at South St. Paul.

Mr. TINCHER. I do not know anything about it except what some gentleman stated here. Where do you keep these men——

Mr. GREEN. Keep this in mind. I want to impress this upon the committee. Even in our own State of Minnesota last winter at the session of the legislature, after all these bills had been passed, a year after they had been passed and after they had been in operation over a year, we had a prominent man from South St. Paul come before the legislature with a view to drafting an amendment to this stockyards bill before the Government ever took hold of the matter at all. Why did he do that?

I got wind of it, and I called him in conference, and I said, "What am I to understand you mean by this, attempting to amend the stockyards control bill?" "Why," he said, "my people are opposed to it." "Opposed to it?" "Yes, sir; the people in general who are shipping stock here are opposed to it." "Upon what ground are they opposed to it?" "Upon the ground that they are paying a cent and a cent and a half and 2 cents for weighing live stock, which is too much."

Now, gentlemen, I mention this just to impress upon this committee as regards these charges. These charges of a cent and a cent and a half and 2 cents are not for weighing. That is a charge for the entire supervision of the yards, and it pays every single man, woman, or child that may have anything to do with the supervision of those yards, either in the office or in the yards proper.

The CHAIRMAN. They are all salaried men?

Mr. GREEN. All salaried men, and they are paid out of this charge that is made for weighing. It was the impression of many, even in our own legislature who were there at the time the bills were passed, that this 1 cent and 1½ cents and 2 cents was paid for the purpose of weighing the stock, and that the State was paying all these employees, about 30 in number. Do not go away with that impression.

Mr. VOIGT. Will you state what the 2 cents does include?

Mr. GREEN. The 2 cents includes cattle——

Mr. VOIGT. I mean what service is rendered for the 2 cents?

Mr. CLAGUE. Perhaps it would be better for Mr. Wells, the supervisor of the yards, to give that.

Mr. GREEN. He has a detailed statement to read to you.

I am not going to take up your time, gentlemen, although I would like to talk on this for hours. We come from the Northwest. We come down here, gentlemen, in the interest of fair play and a square deal. The farmers of this country are demanding and have been demanding for a number of years the square deal, I care not whether it comes from the State or from the Nation.

Mr. CLARKE. Don't you think you are getting it now in the packer law?

Mr. GREEN. I do not know, but I will tell you frankly that I think unless the Federal Government is more interested in our little local affairs up there than we may perhaps think they are, unless they take a vital interest, that work will naturally go by default and there will not be much or any supervision.

Mr. TINCHER. Do you approve of the passage by Congress of the national packer control act?

Mr. GREEN. Gentlemen, you have approached a serious question, and I want to tell you from the floor of this house that I do not believe you have got any packer control bill at all. I do not believe it touches the vital questions and the vital points that control the packers of this country?

Mr. TINCHER. What points are left out?

Mr. GREEN. And I want to say further than that——

Mr. TINCHER. That is easily said. Just what is left out? Tell us what is wrong with it.

The CHAIRMAN. Tell us what changes you would suggest.

Mr. GREEN. I do not want to go into that——

Mr. KINCHELOE. I wish you would go into more details about that.

Mr. GREEN. You have got a law, gentlemen, that goes to a certain extent, but what the farmers are demanding is something that actually regulates and controls.

Mr. KINCHELOE. You are in favor of repealing the packer control act?

Mr. GREEN. No.

The CHAIRMAN. Oh, well, you said it was of no value.

Mr. GREEN. No; I did not say that.

The CHAIRMAN. Yes; you want to throw it all aside. Let us know what is wrong with it.

Mr. KINCHELOE. You say you think it is not of any account, in substance.

Mr. GREEN. Oh, no——

Mr. KINCHELOE. Let us be a little more specific then. I want you to be specific, because you say you have given years of study to this matter. I am anxious to know—if there is anything else necessary to regulate these packers I want to vote for it. I want you to point specifically to what is left out of the law. I want some information.

Mr. GREEN. If I said it was of no account, gentlemen, I did not mean that.

(At the request of several members of the committee, the reporter read the statement of the witness, as follows:)

"Gentlemen, you have approached a serious question, and I want to tell you from the floor of this house that I do not believe you have got any packer control bill at all. I do not believe it touches the vital questions and the vital points that control the packers of this country."

Mr. GREEN. That is it.

Mr. KINCHELOE. Well, let us discuss what is not in the packer control law that ought to be in it. You say it does not touch the vital points. I want to know what is not in it that ought to be in it. I am asking for information.

Mr. GREEN. I will answer that by saying that I am not finding any fault with your committee or with Congress, but you will find that most of your legislation that is passed by the States and most of your legislation that is passed by Congress sooner or later receives amendments. Is not that a fair statement?

Mr. KINCHELOE. But you are not giving us the information you desire.

The CHAIRMAN. If that is true, let us have amendments. Here is the situation: The Supreme Court upheld this act on Monday and the witness is now three days later declaring that the law is ineffective.

Mr. KINCHELOE. Will you be kind enough to give the committee the benefit of your information? Because I am for amending the packer law if it is not adequate. We gave months of consideration to this law and were in executive session for days trying to write a law that would regulate the packers and protect the shippers of this country. You say it does not go far enough. I wish that for the benefit of myself and, I imagine, the other members of the committee, you would tell us what we have left out of that that ought to be in it?

Mr. GREEN. I am not here to discuss the packer bill——

Mr. TINCHER. But it is not fair for you to come before this committee and make the assertion that we have no packer control law, that it does not touch the vital questions, and refuse to tell us in what way it is defective. That is cheap criticism.

Mr. GREEN. Now, gentlemen, let us lay that all aside for a minute. You do not contend—I do not suppose there is a man on this committee that contends that the provisions in there for stockyards control are perfect. Don't they need amending?

Mr. KINCHELOE. In what way does it need amending?

Mr. TINCHER. I think that when the Federal Congress said to the Secretary of Agriculture, "You now absolutely control the stockyards of the country and the operations of them on behalf of the public" we went just as far as we could possibly go. And I say that a man that makes statements of that kind and indulges in that cheap talk that is fashionable up Northwest could better spend his time studying the bill.

Mr. GREEN. Gentlemen, I do not want it to appear that I am one of those cheap talkers. If I had ever appeared before you with any cheap kind of talk before, perhaps that statement would be appropriate.

Mr. KINCHELOE. But it is extravagant talk if you can not tell us what we have left out.

Mr. GREEN. Well, gentlemen, if you insist upon my opinion, I would put into that packer bill the things that I wanted to do, and leave it to nobody to control. You know how officials control things in this country. We have had them in Minnesota, and this is no exception. Federal control is no exception. If you wish to get my candid opinion of this, I would put into that packer bill just exactly what I meant to do, and not leave the control to anybody.

Mr. TINCHER. Have you a copy of your law there?

Mr. GREEN. I have not a copy here.

Mr. TINCHER. Let me suggest this. Did you not do that when you were a member of the legislature? You turned the control of the weighing and control of the stockyards all over to this commission that you created. And I will suggest further that any man that has had any legislative experience at all knows, if he has given serious thought to the subject, that it would be impossible for Congress to specify in a bill all the regulations that would be necessary for the running of the markets and the control and supervision of the packers.

Mr. GREEN. I will frankly admit that. In answer to your question, let me state one thing. You understand, there were six regulating bills passed at the session of

legislature. One provides for general supervision, one for supervision of the ighing, another for the bonding, another for the regulating of the commission men, d so on down the line. There was no general supervision provided for in any e bill.

Mr. TINCHER. Do you think we would have had a better bill if the Government pervision of the weighing and the supervision of the stockyards and the supervision the traders and the supervision of the packers were put under different heads? o you mean to say that would have been better?

Mr. GREEN. I think they should all have been mentioned in the bill.

Mr. TINCHER. Well, they are mentioned in the bill.

Mr. JONES. Here is the trouble about mentioning them. If you leave out anything, then it is eliminated by the mentioning of the others. It is a universal construction of law that if you undertake to enumerate different things those not enumerated are left out. On the other hand, if you give general supervision you include everything.

Mr. KINCHELOE. Have you given this present packers' law careful consideration and study?

Mr. GREEN. Why, gentlemen, we were down here three or four days. We studied it all the time we were here. That was a year ago.

Mr. KINCHELOE. That was when the bill was pending. But have you given the present law careful consideration?

Mr. GREEN. Not very much.

Mr. KINCHELOE. Then do you not think it is a little extravagant for you to say the we have no packer bill?

Mr. GREEN. I beg your pardon, gentlemen. You misconstrue my remarks. I mean the teeth are left out of the bill.

Mr. KINCHELOE. Well, that is easily said. What teeth are left out?

Mr. GREEN. I have just told you that I would specify in there what I mean by supervision.

Mr. KINCHELOE. As far as I am concerned, I have tried to give close and careful study to this bill. I believe that this bill, if the Department of Agriculture will do its duty—and I have no reason to doubt that it will——

Mr. GREEN. I have not either.

Mr. KINCHELOE. I believe they can regulate every bit of the stockyards from beginning to end if they do their duty, don't you?

Mr. GREEN. Yes, sir; if they will do their duty.

Mr. KINCHELOE. Then why do you say we have no packer control bill?

Mr. TINCHER. I want to go on record here as in favor of entrusting that control to the Department of Agriculture fully and freely rather than take any chances on letting anyone interfere with the enforcement of that law that would express any such sentiments as have just been expressed.

Mr. JONES. I really think the gentleman said something that he did not mean to say.

Mr. GREEN. I have apologized already. I have said that that was not my intention, to say that there was no packer bill or that the packer bill did not give supervision.

The CHAIRMAN. Have you read the bill?

Mr. GREEN. I have read the bill; yes.

The CHAIRMAN. Let me read three or four lines:

"SEC. 310. Wherever * * * the Secretary is of the opinion that any rate, large, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, discriminatory, the Secretary—

"(a) May determine and prescribe what will be the just and reasonable rate or large, or rates or charges, to be thereafter observed in such case, or the maximum minimum, or maximum and minimum, to be charged, and what regulation or actice is or will be just, reasonable, and nondiscriminatory to be thereafter followed."

And so on.

Mr. GREEN. There may be a misunderstanding; we may be talking about two ferent things. I had no reference at all to stockyards control when I mentioned packer bill. I meant the regulation of the packers. I did not intend to have reference at all to the supervision of the stockyards in that bill when I spoke ut the packer bill; I spoke about regulating the packers.

The CHAIRMAN. But the packer bill goes further than any bill that has ever been cted, and it has been sustained by the courts.

Mr. GREEN. I believe that the supervision provided for there over stockyards is all right, provided it is clear in there regarding this weighing.

Mr. TINCHER. I think I understand you now. The gentlemen from the Northwest are simply offering your testimony here to disclose to this committee how harmonious and how nice it would be to have compulsory cooperation forced upon the Department of Agriculture by an act of Congress between you and the Department of Agriculture. You are expressing your view of these laws simply to enlighten the committee on how nice it would be to have the Department compelled to cooperate with you?

Mr. GREEN. In justice to myself I want to say that I did not know this bill you are now considering had been introduced in Congress until I was asked to come down here.

Mr. KINCHELOE. Which bill?

Mr. GREEN. The bill we are discussing.

Mr. KINCHELOE. This is just an amendment.

Mr. GREEN. I understand.

Mr. KINCHELOE. The first thing the act says is, "This act may be cited as the 'Packers and stockyards act, 1921.'"

And you propose to amend section 405 by adding subsection (d).

Mr. GREEN. You may think I am the author of this bill. I did not mean to give you that impression. I knew nothing about it until I was asked to come down here.

Mr. JONES. I think what the gentleman meant to say was that he did not think any control should be exclusive, that it should exclude State control as well. You mean to say, do you not, that you do not think any control on the part of the Government should exclude corresponding control on the part of the State?

Mr. GREEN. That is what I mean. And I think that this bill that we are now considering is a bill to harmonize the packer control law in regard to stockyards control.

Mr. JONES. And, as suggested by Mr. Tincher, if you amend this bill so as to authorize the State to go ahead and regulate the weighing and require the shipper to pay these charges and to require them to submit to all this State control, how can you cooperate with the Federal Government and get along harmoniously with them if down deep in your heart you feel that we have not any real packer control bill that touches the vital points in packer control?

Mr. KINCHELOE. I think we are somewhat beside the question here. The wit ess admits that he has no knowledge——

Mr. JONES. I think I have a right to ask that question.

Mr. CLAGUE. Mr. Chairman, we have another witness here, Mr. Bowen, one of the railroad and warehouse commissioners. He is very anxious to get away and will not need more than 15 minutes.

Mr. CLARKE. This gentleman apparently does not know anything about the law. That is what we are discussing.

Mr. JONES. I will withdraw the question.

Mr. GREEN. I do not want to leave the impression with this committee, gentlemen, that I do not think you have in what you call your packer bill the regulation of the stockyards. That is not what I intended to say. When you spoke about the packer bill I supposed that you had reference to controlling the packers.

The CHAIRMAN. It applies to the packers just as much as it does to the stockyards. The conditions are almost identical.

You are a shipper. I have been engaged in that business myself. I think every member of this committee and anyone having any interest in the shippers at all is for any legislation or any amendment of anything which will help the shipper and assure him a fair deal. The question is this: As the bill stands, the Secretary of Agriculture is given exclusive jurisdiction, and he has the power to regulate, and, as some of the best lawyers on this committee contend, he now has the power to cooperate with you and can accomplish exactly what is desired. Now comes in the question of expense. If you are a shipper you know that the expenses are piling up all the time, and you know that when we get our returns there is usually very little left. The railroad companies and the commission men and the stockyards get the most of it.

Mr. GREEN. That is just what I wanted to touch on.

The CHAIRMAN. And your proposition now is to add to the expense. Your proposition is to provide for a fee, and that will have to be deducted from the returns. Why should we go to the expense of duplicating these things? It seems to be a little controversy between you gentlemen and the Department of Agriculture. It is exactly the same thing that we had under the standardization act. You were never satisfied with that. You have been down here to amend that and been finding fault with it ever since the time it was enacted. Now comes in the same question, and the day after the law has been declared constitutional and upheld by the court you start in amending it and state that we have no law at all.

I want you to give this matter consideration. You and the department can get together and fix up your differences, and if you like, this committee will do exactly as it did with the grain business. We will fix the standards at any time the department wants to do it. This law provides for everything that is necessary. Whenever you come before this committee and point out to the committee that the Department of Agriculture is derelict in its duty, this committee will give the matter attention.

Now, why should the Department of Agriculture not do the weighing and supervise also? The Secretary of Agriculture came before this committee and said, "We have thousands of people in our employ, and we will utilize the services of these people and cut down the expenses." You propose to set that aside and set up State machinery at large expense. The Bureau of Animal Industry has in the stockyards a number of people. The services of these people could be utilized in checking up and in enforcing this law. I understand now—I hope it is not true—that the two services are to be separated and that we are to pile up an additional expense. The object of passing this bill was not to create large expense or to employ a large force of people. It was with the idea that we should utilize the services of the people that we had. Let us first find out what the department is trying to do. If the department is not going to do its duty we will see that the situation is corrected.

STATEMENT OF MR. IVAN BOWEN, MEMBER STATE RAILROAD AND WAREHOUSE COMMISSION, MANKATO, MINN.

Mr. BOWEN. Mr. Chairman and gentlemen of the committee, we are down here for the reason that there is some conflict between State and Federal rights. That is one of the burning questions out in the States, as to how much power a State has left. The reason we are down here is not to fight the Federal Government, but for the purpose of cooperating with them. There have been expressions around the table here to the effect that the Federal Government should have the control of interstate commerce, leaving the intrastate commerce to the States.

Gentlemen, under the bill that you have passed there is no such thing as intrastate commerce in anything that goes through the stockyards. Sixty-one per cent of the stock that is coming into the South St. Paul yards comes from the State of Minnesota. Much of that stock is slaughtered there. A lot of it is sold through a local packing plant that has no Government regulation, and is sold in the cities of St. Paul and Minneapolis. That is absolutely intrastate, and yet under your law it is governed by the interstate laws.

Mr. RAINEY. Is it possible to differentiate there, however, as to which is interstate and which is intrastate?

Mr. BOWEN. Not under your laws. And, I think, under the construction that the Supreme Court put on it day before yesterday. It is for the purpose of endeavoring to do away with this conflict that we are down here.

When the bill passed we came down here, and we went to the Secretary of Agriculture and said, "We are taking this bill upon its face. It has a cooperative provision in it. We want to cooperate with you," We have a department out there that has been put in for certain reasons under our State law, that has been organized at great expense to the State of Minnesota, not only collected from the shippers. That stockyards at present is supported by the State of Minnesota. The shippers merely pay the expense of the weighing and the other supervision down there. The expenses of the railroad and warehouse commission are paid by the State of Minnesota.

Mr. JONES. You seem to have fallen into the same error that you say we have fallen into in drafting the amendment here. You say that nothing shall operate "to prevent any State from appointing and paying weighers of live stock in commerce." You do not say in interstate commerce. Why do you not say "interstate commerce?"

Mr. BOWEN. Your bill defines commerce as everything that comes through that stockyards, regardless of its destination.

Mr. JONES. And that definition is going to remain in that bill which you are amending. Therefore your amendment will include everything which comes through the yards. Why do you not differentiate now, if you want to control your State matters, and make this control simply in intrastate commerce?

Mr. BOWEN. We do not. We want to cooperate with the Federal Government, so as to make operative the Federal law. I agree with the chairman, that under the law as it is now we have the right to do this.

Mr. JONES. Let me ask you one more question there. Suppose the National Government establishes a uniform system of weighing, sends out supervisors and establishes other facilities there. If this amendment were adopted would your

State still insist on maintaining its own facilities and charging this 2 cents per head?

Mr. BOWEN. If the anemdment is adopted, yes, for the reason——

Mr. JONES. Then would not the man shipping cattle from Texas or Louisiana or Oklahoma to the St. Paul yards have to pay for the national weighing and also the 2 cents per head to your State official?

Mr. BOWEN. Not at all, sir; for the reason that the State weighing is going to be under the Secretary of Agriculture. In endeavoring to get a working agreement with him we said, "If you have any objection to our weighing charge we offer to let you regulate it; and we believe that under the packers and stockyards act you can do it."

Mr. JONES. I do not think you understood my question. Suppose he finds it necessary to establlsh a uniform weighing system all over the country under the direct charge of the Secretary of Agriculture. Of course if he did that he would establish it in your State, too. You say that if he does that you intend to maintain your system. Would not a shipper from my State have to pay both those charges?

Mr. BOWEN. No; because our system would be the only system there.

Mr. KINCHELOE. Provided the Secretary of Agriculture would let you do it.

Mr. BOWEN. If you pass the amendment, yes.

Mr. JONES. He would still have the power to establish his own system. Suppose he finds it necessary to establish his own system, a uniform system, including the St. Paul stockyards, whereby his agents and officers would do this work. Then if we pass the amendment your State will also do the weighing. Would not that be a double charge on the shippers?

Mr. BOWEN. Well, the object of the amendment is to permit the State to do the weighing, both what we call interstate and intrastate. It is all defined as "commerce" under your act.

Mr. JONES. I know, but the amendment is so worded that it would not preclude the Secretary of Agriculture also from doing it.

Mr. BOWEN. If that is your construction of it then I think you had better amend it. I can not construe the language of the law as it is there except as it strikes me.

Mr. JONES. You think the packer bill should be amended by putting this in, and also that he would have to accept these weighings?

Mr. BOWEN. Yes, sir.

Mr. JONES. And be compelled to take the State's weights and the State's certificates?

Mr. BOWEN. Yes; under his supervision. The Federal Government now can not do the weighing. What we want to get is a disinterested party to do the weighing. We do not want the weighing to be done on the stockyards' scales, because that puts them in the hands of the stockyards company, and the stockyards company is the packers.

Mr. CLARKE. Is it to be supposed then that you would not get a fair deal?

Mr. BOWEN. Yes; with the stockyards company doing the weighing.

Mr. JONES. I thoroughly agree with you on that proposition. If the Federal Government is just going to turn it back to the stockyards company we would have to have this amendment, or some amendment which would require the Secretary of Agriculture to supervise it or look after it in such a way as not to leave it to the packers or the stockyards people themselves.

But you run into this trouble. If you draft this amendment in such a way as to turn it over to the States you might have a different State organization in every State, which would be hopelessly conflicting. Rather than adopt this amendment, would it not be better, if the Secretary of Agriculture does not proceed under the present law, to draft a bill requiring him to see that this service is rendered?

Mr. BOWEN. What we want to do is this. We want to operate the facility under the supervision of the Secretary of Agriculture. If it takes different language to do it I am perfectly willing to have it changed. We do not care what it is.

Mr. JONES. You are perfectly willing for the Secretary of Agriculture to supervise and direct this, are you?

Mr. BOWEN. Yes. We went to him and said, "Will you license our weighers, as you do our grain inspectors out there? We are willing that you should. We will let you regulate the amount of the charges. You can do it under the act."

We are not trying to bring on a fight between the States and the National Government, a fight that is looming now in every quarter from which you approach legislation.

Mr. JONES. Then you are willing, if this amendment should be adopted, that it should be worded in such a way that the Secretary of Agriculture or somebody under his authority shall supervise and direct whatever officers and facilities there may be and that he shall establish the regulations under which they shall operate?

Mr. BOWEN. That is all right so far as we are concerned.

Mr. KINCHELOE. Has he not the right to do that now under the present law?

Mr. BOWEN. I believe he has the power to do all we want him to, but his counsel has raised the objection that he can not.

Mr. JONES. I understand there is that hitch, that the counsel for the Secretary of Agriculture has ruled that they have not that authority. Now, if they should change that ruling or—if they do not change the ruling—if the bill should be amended in such a way as to enable him to do that very thing, that would be a satisfactory solution of this problem?

Mr. BOWEN. We are entirely willing to have him supervise it.

Mr. JONES. Just what do you mean by "supervision"? To what extent would you permit it?

Mr. BOWEN. He can license our weighers, he can fix the charge that is necessary to keep them there, or do anything else that is necessary to give a weight that the shippers of live stock out there are willing to take.

Mr. JONES. Are you willing for him to supervise not only the weighing but the other activities and operations in which they shall engage—all the activities and operations of these State agents and officials?

Mr. BOWEN. We are willing to recognize every provision of your packers and stockyards act, and we are in favor of it. We want all that regulation, and we want some regulation in advance of it, of things that we have found have operated to the prejudice of the shippers.

Mr. JONES. Then you think that if the bill had been construed by counsel for the Secretary of Agriculture in the way you think it should be construed it would have been all right?

Mr. BOWEN. It would have been all right; yes, sir.

Mr. JONES. I think your construction is correct, as a matter of fact.

Mr. BOWEN. And I believe there is nothing in the finding of the Supreme Court that is against that construction of it.

Mr. JONES. Your position is made much clearer by that statement.

Mr. SINCLAIR. And in addition you satisfy the shipper in this, that if there is a complaint he has a body that he can go to and get relief immediately without having to send to Washington or somewhere else?

Mr. BOWEN. Yes.

Mr. SINCLAIR. That is the beauty of this amendment.

Mr. KINCHELOE. The purpose of the original act was to have a man in the Federal Government right there to give the immediate relief.

Mr. BOWEN. Gentlemen, you have passed laws containing these same provisions recognizing authority in the States. But without the provisions in the laws the authority has been recognized by the Supreme Court on numerous occasions. For instance, you passed the pure food act. Now, we had a pure food act that went a little further. The Supreme Court recognized it. In numerous other cases the Supreme Court has held that a charge for a facility or privilege is not an undue burden on commerce. The language is in the opinion that was handed down the other day by Mr. Chief Justice Taft.

And that is our contention in this case, that we have this authority but it has been denied to us. Therefore, instead of getting into a great conflict with the Federal Government, we want the Congress to make clear what they meant by this provision that the Department of Agriculture should cooperate with us.

Mr. JONES. I think if it has been construed that they can not cooperate and they stand by that construction, the bill ought to be amended so that they can.

Mr. MCLAUGHLIN of Michigan. Let me see if I understand the situation. The Department of Agriculture has acted up there, and in some way has recognized the srockyards' scales, and so on, and it is supervising them. That takes the matter out of your hands, and you are complaining because the Department of Agriculture has not recognized you, and you want a law to compel them to recognize you, that is about the size of it, is it not?

Mr. BOWEN. To recognize our operation of a facility that is used in interstate commerce, yes.

Mr. MCLAUGHLIN of Michigan. The department having already recognized another one? Is that right?

Mr. BOWEN. I will read you the rule that applies to it, and let you put your own construction on it.

(Informal discussion with reference to further hearings.)

(Whereupon, at 12 o'clock the committee proceeded to the consideration of other business, and thereafter adjourned to meet at 10 o'clock a. m. Saturday, May 6, 1922.)

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Saturday, May 6, 1922.

The committee met at 10 o'clock a. m., Hon. Gilbert N. Haugen (chairman) pre siding.

There were present: Mr. Haugen, Mr. McLaughlin of Michigan, Mr. Tincher, Mr. Sinclair, Mr. Clague, Mr. Rainey, Mr. Aswell, and Mr. Jones.

STATEMENT OF MR. IVAN BOWEN, OF MANKATO, MINN.—Resumed.

The CHAIRMAN. Mr. Bowen, I presume you want to finish your statement.

Mr. BOWEN. Yes; I would like to complete the statement I started.

Mr. Chairman and gentlemen of the committee, I wish to reiterate the proposition that we are down here for the reason that we believe there is involved here a serious question of conflict between Federal and State rights. Since the law was passed we have always accepted the constitutionality and validity of the law and have been in favor of it, and took the position that it was for the purpose of cooperation between the State and Federal Government that certain provisions were put into this law.

There is on page 8 of the law, section 308, paragraph (b), this language:

"The Secretary, at the request of the live-stock commissioner, board of agriculture, or other agency of a State or Territory, having jurisdiction over stockyards in such State or Territory, shall investigate any complaint, and so forth," etc.

We believe that is a recognition of the fact that there was to be some sort of State regulation that was to be recognized.

Mr. MCLAUGHLIN of Michigan. Will you read that again, please?

Mr. BOWEN (reading). "The Secretary, at the request of the live-stock commissioner, board of agriculture, or other agency of a State or Territory, having jurisdiction over stockyards in such State or Territory, shall investigate any complaint forwarded by such agency in like manner and with the same authority and powers as in the case of a complaint made under subdivision (a)."

Mr. MCLAUGHLIN of Michigan. That is, the Secretary of Agriculture, when requested to do so, investigates the complaint?

Mr. BOWEN. Of a State agency, yes; thereby, as I contend, recognizing in the law that there was to be recognized a State agency. Then section 311——

Mr. TINCHER (interposing). There has been no tendency on the part of the Department of Agriculture to refuse to make any investigation of that kind, that you know of, has there?

Mr. BOWEN. The only thing is that under the opinion they have got and their attitude, Mr. Tincher, they absolutely say there can be no State agency having any jurisdiction in the stockyards. If that is the case, there is no State agency——

Mr. TINCHER (interposing). If I am not mistaken they have had quite a hearing down in Kansas City recently in which the live-stock inspector of my State was the prime mover in causing the hearing, and Mr. Morrill's force and the legal department here went down there and conducted quite a hearing.

Mr. BOWEN. You may have such an agency there, but if the opinion that they got from Judge Hiner is valid, then your agency has no duties and has no jurisdiction within that stockyards and is merely a name.

Mr. MCLAUGHLIN of Michigan. Will you please read a little further there. The Secretary of Agriculture, if requested to do so, shall make an investigation and then what?

Mr. BOWEN (reading). "Shall investigate any complaint forwarded by such agency in like manner and with the same authority and powers as in the case of a complaint made under subdivision (a).

Mr. MCLAUGHLIN of Michigan. Then does it say what the Secretary of Agriculture shall do after he makes this investigation.

Mr. BOWEN. It just goes ahead and provides the procedure for determining and making the orders.

Mr. MCLAUGHLIN of Michigan. Who makes the orders?

Mr. BOWEN. The Secretary of Agriculture. That is the construction we placed upon it, that even in the matter of our weighing he has supervisory control. He can make the rate, if he so wishes.

Then your section 311, which is the no-preference section, taken bodily from the transportation act, recognizes that through State rule or a rule of an agency there may be a ruling which will be prejudicial to interstate commerce and thereby give the Secretary of Agriculture the power by his order to remove such undue prejudice or discrimination, recognizing that there must be some State authority, which the act itself recognizes.

Then, coming down again to section 407, "The Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this act and may cooperate with any territory or agency of the Government, any State, Territory, District, or possession, etc.," thereby, according to our position, recognizing that Congress recognized that there was some State agency that had some rights in the premises.

Mr. JONES. Has the Secretary of Agriculture ruled that a State agency has no authority whatever to do anything which is not even in conflict with this law?

Mr. BOWEN. That is the way I interpret it, and I would ask that they put in the record here the opinion of Judge Hiner.

Mr. MCLAUGHLIN, of Michigan. There would be activities in those yards relating to intrastate and interstate commerce. We could not refuse to take notice of that fact, that there is some intrastate business and some interstate business there, but as you have read the language there, there is nothing, as I look at it, that would abridge the authority of the Secretary of Agriculture as to interstate matters. He can direct and control everything, but if something arose that was intrastate the local authorities would go on and function.

Mr. BOWEN. I claim that is the interpretation of that act and the secretary now has all the authority necessary to recognize us out there, but under the opinion he has gotten he refuses so to do, and we believe that the proper place to come is to come to Congress and find out whether or not we can clarify this act.

Mr. MCLAUGHLIN of Michigan. Does the opinion indicate that the State authorities can not function in any case even as to intrastate business?

Mr. BOWEN. That is as I interpret it, because, Mr. McLaughlin, under the definition of commerce in your act, and as construed now by the Supreme Court, there is no such thing as intrastate commerce within the stockyards. In the State of Minnesota last year 61 per cent of the live stock from the State of Minnesota came into the stockyards. Most of that was manufactured there and a lot of it was sold to an independent packing house which does not engage in interstate commerce. Their product is sold in Minneapolis and St. Paul and yet under their interpretation we have no power over that.

Mr. MCLAUGHLIN of Michigan. Then what are you going to do in the face of the decision of the Supreme Court, if it is what you say?

Mr. BOWEN. I still claim that under the recent opinion of the Supreme Court and under other opinions, a State has a right to regulate a facility provided it is not an undue burden. That has been recognized in decision after decision.

Mr. MCLAUGHLIN of Michigan. But your statement a moment ago was to the effect that the Supreme Court had said——

Mr. CLAGUE (interposing). No; the Attorney General.

Mr. MCLAUGHLIN of Michigan. I understood him to claim that the opinion of the Supreme Court practically——

Mr. BOWEN (interposing). As applied to the act. The act provides for all the stock that comes in there, putting the stockyards under the exclusive jurisdiction of the Secretary of Agriculture, as interpreted by their opinion which they got from Judge Hiner.

Mr. TINCHER. What you mean is that the Congress, in the passage of the packer-control bill, defined commerce.

Mr. BOWEN. Yes.

Mr. TINCHER. And covered the stockyards, or certain of the stockyards.

Mr. BOWEN. Yes.

Mr. TINCHER. That definition of commerce has now been upheld by the Supreme Court.

Mr. BOWEN. Yes; for the purposes of the act.

Mr. TINCHER (continuing). By a specific mention and reference to the definition.

Mr. BOWEN. Yes; for the purposes of the act.

Mr. TINCHER. Now, that leaves your stockyards at St. Paul an interstate proposition, as defined by law.

Mr. BOWEN. Yes.

Mr. TINCHER. Of course, in order for a man to understand the justice and injustice of this proposition, he ought to have quite a comprehension of the live-stock industry.

Mr. BOWEN. Yes.

Mr. TINCHER. The Supreme Court evidently gleaned from the hearings before this committee and mentioned in their report the fact that it was necessary to have this kind of regulation and for some one to define commerce, because the traders were claiming they were not in interstate commerce, and the stockyards claimed they were not in interstate commerce, and the commission men claimed they were not in inter-

state commerce, and we undertook to define interstate commerce so that it would bring them within the act, and the Supreme Court has upheld that.

Mr. BOWEN. Yes.

Mr. TINCHER. Now, what you really want us to do by an amendment to this law is to change our definition of commerce.

Mr. BOWEN. No; I do not. I want the act to stand just as it is interpreted by the Supreme Court.

Mr. TINCHER. You want us, then, to amend the act so as to permit—or rather not permit but to compel the Federal agency enforcing the act to delegate certain portions of it to the State authorities where they have such State authority.

Mr. BOWEN. No; I want them to recognize the principle that has always been recognized, that your police power lies in the State and that inspection laws, such as a weighing law, is and has been recognized by the Supreme Court, is a police power within the State, and provided the charge is not extraordinary it does not burden interstate commerce in conflict with any act of Congress.

Mr. TINCHER. Well, I want now to get down to what you really want. Suppose the party charged with the responsibility of the enforcement of the packer control act would go out to St. Paul and say, "I want this stock weighed on the same identical scales they are being weighed on now, and I have a supervisor in the St. Paul yards who will supervise the weighing and see to it that every one gets a square deal in the matter of weights. I do not want any extra charge for weighing anyone's stock in the St. Paul yards because there is not any charge anywhere else, and I intend to supervise the weights in that way."

Now, what you want to do is to make them, by law, say to a State organization up there, "You go ahead with the weighing and charge for them." You say that the Secretary can regulate the charges, but you are the one that is charging for it and you say, "It is true that you are charged with the responsibility under the law of supervising and controlling the expenditures on a man's live stock from the time it gets into these yards and until it is sold, but we want you to say to them in reference to this separate organization, 'You must recognize that organization and let them make certain charges.' "

You receive a salary which you get from this weighing, do you?

Mr. BOWEN. Oh, no; I do not. I am paid by the State of Minnesota through an appropriation.

Mr. TINCHER. But yours is a State office and one of the main duties of your office concerns the stockyards?

Mr. BOWEN. Oh, no; we have practically every public utility in the State of Minnesota. This is a public utility and simply comes under our department for that reason.

Mr. TINCHER. But you have been somewhat jealous, as all public utility commissions have, of your rights as officers and you want to protect them as far as you can?

Mr. BOWEN. We want to protect the powers of the State. Individually, Mr. Tincher, I have no regard for this. They could wipe out my job to-morrow and I could go back to practicing law and make more money than I am making now. I think I misunderstood some of the references you made to our great interest in holding these 30 employees. Of course, we do have some interest in them, but we have no more interest in them than the Secretary of Agriculture and the Department of Agriculture would have in placing employees.

Now, as regards this weighing proposition and the proposition that you say an outside shipper is going to pay for, let us not be mistaken about the proposition. Before we ever took this over the stockyards did the weighing and they had a weigher at every one of the scales and charged for it. How did they charge for it? They charged for it by incorporating it in their yardage charge.

Mr. TINCHER. There can not be a stockyards of any size operated without a stockyards company and the scales are a part of the stockyards.

Mr. BOWEN. That is true.

Mr. TINCHER. The weighing has got to be done.

Mr. BOWEN. Yes.

Mr. TINCHER. It does not make any difference whether Mr. Morrill has the State do the weighing or the stockyards do the weighing under Government supervision or how it is done, the weighing at St. Paul will still continue to be done on the scales of the stockyards company.

Mr. BOWEN. Yes——

Mr. TINCHER. And it would not be economical to tear out those scales simply because they belong to the stockyards company.

Mr. BOWEN. But it makes all the difference in the world, Mr. Tincher, whether they have a man there weighing the stock that is not interested in the transaction

and also whether they have supervision over them to know whether or not those scales are weighing accurately. There is more fraud perpetrated to my mind in this country through incorrect measures and weights than there ever is through any combination or monopoly. and we have the evidence in this case to show it; in fact, we have a man here who can tell you that that is going on down at Kansas City where you are shipping.

Mr. TINCHER. That argument would be the best argument in the world, in my judgment, in favor of this committee being jealous of the rights of the Government in supervising the weighing, without any reflection at all upon your organization, because I have none to make; but you are only a drop in the bucket compared with the national live-stock industry and they have not the same law that you have at other places, and your proposition simply confirms my ideas about it. We considered that as one of the things that made it necessary to pass a law to regulate this proposition. It was simply mentioned in the hearings and considered as one of the necessary things to be corrected, but if you are right, the greatest evil to-day is the cheating in weighing.

Mr. BOWEN. That is so recognized in the opinion of Chief Justice Taft. It is recited in that opinion.

Mr. TINCHER. Yes; it is recited as a part of the hearings before the committee. Now, you would not want us to do anything here that would weaken the right of this administration to see that we get proper weights at any other market, would you?

Mr. BOWEN. Why, no. I want you to strengthen it, and if you had provided in your law that the Secretary of Agriculture would provide a weighing force so as to have a disinterested party do the weighing, you would not find us here; but they rule they have not the right to do the weighing.

Mr. TINCHER. I understand you are a lawyer and if you were not in this work you would be engaged in the practice of law.

Mr. BOWEN. I would be; yes, sir.

Mr. TINCHER. And one of your main reasons for considering it necessary to amend this law now and transfer this power back to the State is your well founded opinion that the police power belongs to the State.

Mr. BOWEN. Yes, sir. I merely wish to call attention——

Mr. JONES (interposing). Before you go to another subject, this definition of commerce says: "For the purpose of this act a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the live-stock and meat packing industries whereby live stock, meats, meat food products, live-stock products, and so forth, are sent from one State with the expectation that they will end their transit, after purchase, in another." As I understand this definition, it only undertakes to include in commerce the transactions with reference to articles actually shipped interstate, so I do not understand that the committee or Congress intended by this definition to take over everything.

Mr. BOWEN. I do not believe so either; but under the interpretation that has been put on, "with the expectation that it will enter interstate commerce, either as live stock or meat products," that takes it all in.

Mr. JONES. That takes it all in except the commerce as defined in this act is meant to apply to transactions that ultimately go into some other State or district.

Mr. BOWEN. Yes; there is no way of separating them.

Mr. JONES. If I understood your position the other day, you do not ask altogether that the Secretary of Agriculture be forced to adopt and accept the State's activities in this regard, but the main thing you want is that it be made clear that the Secretary of Agriculture is authorized to cooperate with and use these facilities in connection with the conduct of the business.

Mr. BOWEN. Well, the Secretary of Agriculture stated to us, if I recall correctly, that if it was possible for him to cooperate with us he wished to do so, but then he got an opinion to the contrary, and he said, "Well, that settles it; I can not go any further."

Mr. JONES. According to the opinion that has been rendered, if he follows that opinion he can not cooperate and accept the activities of your officials.

Mr. BOWEN. No; he can not.

Mr. JONES. Now, I do not believe that that is the proper construction to be placed upon this law.

Mr. BOWEN. I agree with you.

Mr. JONES. I believe it was intended specifically by the committee and by the Congress that he should be authorized to cooperate with and use those facilities, if necessary, and if that is to be the construction I am in favor of so amending this bill so as to permit the use of those facilities and to provide cooperation.

Mr. BOWEN. That is the position in which we come before you. We accepted the bill in that light and thought the Secretary could cooperate with us. We came down

here and said, "Here are the facilities and we wish to cooperate with you to the fullest extent." Then came the interpretation that he could not cooperate and we believed that the only place we could clarify the act was here. Congress is the proper party to clarify the act.

Mr. JONES. I am very anxious to hear a fuller discussion on the part of the agencies of the Secretary of Agriculture as to what policy they intend to pursue with reference to the law, because I am sure it was not the intention to absolutely exclude the Secretary of Agriculture from cooperating with the State authorities if he saw fit, but, at least, to give him authority to cooperate with and, if he saw fit, to accept their activities.

Mr. TINCHER. The opinion was not that they could not cooperate with you. The opinion was that they could not do what you wanted them to do because if they did that they would be delegating authority.

Mr. BOWEN. The opinion, as I interpret it, was that there was no place for the two agencies and one or the other had to be excluded, and therefore the Federal authority must be exclusive.

Mr. JONES. I would like to believe that the statement you have just made is the construction placed upon it by the department, but if I understood the statement of Mr. Morrill yesterday he said that he did not construe it in that way.

Mr. TINCHER. They are cooperating with the State officers in my State and your State and they have had no trouble with them.

Mr. BOWEN. We have not had any trouble with them. We have tried to the fullest extent to cooperate with them.

Mr. TINCHER. But you want them to turn it over to you.

Mr. BOWEN. No; I told them that under this law if they could license our weighers to do the work or if they felt that our charges were unjust, the power is in them to regulate and lower the rates. I believe that is true; but there is no provision in your act for them to do the weighing. We have that facility there and they have the power to control it, and why it should be turned back into the hands of the stockyards company, the very combination that is condemned in this opinion of the Supreme Court, is more than I can see.

Mr. McLAUGHLIN of Michigan. Why do you say the Secretary of Agriculture can not do the weighing.

Mr. BOWEN. That is their interpretation of it as given to me—that he has merely the power to regulate.

Mr. McLAUGHLIN of Michigan. The Secretary of Agriculture can forbid everybody or anybody from doing the weighing who is not doing it in a satisfactory manner, and they can accept the services of other agencies in the weighing of the stock if those services are satisfactory. It is absolutely in the control of the Department of Agriculture and I do not see why you hang on that. The Secretary of Agriculture can not do the weighing. He is not expected to do the weighing, but is expected to stay in his office here.

Mr. BOWEN. He can not do it personally but can order it done under his employees. That is their interpretation.

Mr. McLAUGHLIN of Michigan. He can order it done right and if one man takes it up and does not do it satisfactorily he can say, "Get out," and if another man takes it up and does not do it satisfactorily he can tell him to get out, and get some one who will do it to his entire satisfaction. Now, that weighing may not be done by the Secretary of Agriculture, but it is done under his supervision and control just as this act contemplates.

Mr. JONES. Now, it is your contention that the weighing of these cattle has been turned over to the stockyards themselves?

Mr. BOWEN. I will read you their rule under which it is to be enforced, except we have a restraining order on them now:

"Every stockyard owner or market agency that furnishes weighing facilities at stockyards shall maintain and operate such facilities so as to insure adequate rates."

That is their rule under which the stockyards company took the position that we were out, the same as they refused to put up a bond.

Mr. TINCHER. There would be a fine marketing system in the country if they did not compel the stockyards company to maintain facilities for weighing stock. We would have a fine chance to market live stock if they were not compelled to do that.

Mr. JONES. That is all right.

Mr. BOWEN. They are maintaining the facilities.

Mr. JONES. But you do not think that the matter of weighing live stock should be turned over to the stockyards company?

Mr. TINCHER. You mean the physical matter of the weighing? There is nobody else in the world can do it. They do it under State supervision up there at St. Paul now.

Mr. CLAGUE. No.

Mr. BOWEN. Oh, no; we have our weighers and that is what these employees are doing. There are 18 scales and there is a State weigher at every one of them and the State gives a certificate of weight.

Mr. TINCHER. Who owns the scales?

Mr. BOWEN. The stockyards company.

Mr. TINCHER. Who keeps them up?

Mr. BOWEN. The stockyards company, complying with your law that they shall maintain facilities.

Mr. TINCHER. Then the stock is weighed there under the supervision of the State?

Mr. BOWEN. It is weighed by the State and the State gives a certificate of weight the same as you do under your grain bill.

Mr. TINCHER. And your theory would be that at Chicago they would have to be weighed by the State or by the Federal Government's employees.

Mr. BOWEN. I was at a hearing in Chicago before the chamber of commerce and Mr. Morrill was there, and one thing the grain dealers, the farmers' organizations, and the members of the chamber of commerce agreed on was that the weighing should be done by a disinterested party.

Mr. TINCHER. What interest has the stockyards company in the weights.

Mr. BOWEN. They are the packers. Swift & Co. own the controlling interest in the stockyards there, and the recitals in Judge Taft's opinion shows the interlocking of them all and the necessity for this law of Congress.

Mr. TINCHER. The weighing has to be done under somebody's supervision.

Mr. BOWEN. Yes.

Mr. TINCHER. And you want it done under the supervision of the State.

Mr. BOWEN. Yes.

Mr. TINCHER. We would be in fine shape in Illinois if it was done under State supervision; that is, if we yielded that right to the State of Illinois.

Mr. BOWEN. If it was supervised by the Federal Government——

Mr. TINCHER (interposing). They have been unable to pass any act through the Illinois Legislature in any way to interfere with the five big packers, and you would have us amend this law so that the State organization in Illinois could force us to submit to a State organization there having something to do with our weights.

Mr. BOWEN. Would you not be just as well off as you are now? Is it not just as good an authority as to have one of the parties to the transaction do the weighing?

Mr. TINCHER. We passed this law trying to get Government regulation and Government supervision of the yards. The stockyards company, the packers, and nobody else can cheat you on weights if the Government administers this law fairly and honestly, and, so far as I am concerned, I have no doubt in the world but what the present organization intends to do that, and there will not be any cheating in weights under the administration of the packer control law.

Mr. BOWEN. They will have to put a weigher on every scale there.

Mr. TINCHER. I do not believe that for a moment. I do not believe there could be crooked weighing in the Kansas City stockyards for 24 hours on any one scales without the inspector knowing it, if there was a proper inspector there.

Mr. BOWEN. I make no charge of crooked weighing, but your scales are not in shape. They are not in shape now at Kansas City, where you are weighing your live stock. Out of 18 scales inspected, there was not one scale registering correctly in St. Paul when we took this over.

Mr. TINCHER. What do you know about the scales at Kansas City?

Mr. BOWEN. We have a witness here who was down there looking at your scales and he will testify later.

The CHAIRMAN. How much were the scales out of balance? How much untrue were they in your yards?

Mr. BOWEN. This gentleman here can tell you.

The CHAIRMAN. You are speaking now of your own yards.

Mr. BOWEN. I could not give it, because I am not an expert, but we have an expert here who can tell you that every scale was out of whack.

The CHAIRMAN. To what extent?

Mr. THOMPSON. The maximum variation was 75 pounds on a load of 8,000 pounds. That was the maximum variation.

The CHAIRMAN. How near correct are they now? Do you contend that you can weigh 8,000 pounds of live stock and have the weight come out exactly to the pound with a dozen or 15 head of cattle moving on the scales all the time?

Mr. THOMPSON. No, sir.

Mr. TINCHER. And he says that the maximum variation was 75 pounds. That is a very definite answer. What was the minimum variation?

Mr. THOMPSON. I have some evidence here I would like to put before the committee at the proper time.

The CHAIRMAN. That is less than 1 pound in 100 pounds.

Mr. JONES. That is too much.

The CHAIRMAN. But the cattle, you must understand, are moving on the scales.

Mr. BOWEN. There are two or three hundred drafts passing over every scale every day.

The CHAIRMAN. Were the scales tested?

Mr. BOWEN. They were tested by the stockyards company in the manner we will explain.

The CHAIRMAN. Are they being tested now?

Mr. BOWEN. Yes; they are tested now. We keep one of our men from the scales department there continuously testing scales.

The CHAIRMAN. They are tested by whom?

Mr. BOWEN. They are tested by our scales department.

The CHAIRMAN. Is it not just as safe to trust the testing of those scales to the Department of Agriculture as to any State organization?

Mr. BOWEN. I do not know that they have a testing organization. They may have, for all I know, but we have one there.

The CHAIRMAN. That is a part of the functions of the department.

Mr. BOWEN. We have one there and we claim——

The CHAIRMAN (interposing). That is what the department is undertaking to do——

Mr. BOWEN (continuing). And we claim that these are inspection laws that are supposed to be recognized in the Constitution of the United States. The State has some rights. This business is located in the State of Minnesota. The State of Minnesota paid about $1,000 a day in order to police these yards during the strike.

The CHAIRMAN. They are in the State of Minnesota but the transactions of the State of Minnesota that go through the yards are very small.

Mr. BOWEN. Sixty-one per cent of the stock——

The CHAIRMAN (interposing). Iowa and the Dakotas have some rights there also.

Mr. BOWEN. They certainly have.

The CHAIRMAN. They ought to have some rights in the stockyards at St. Paul.

Mr. BOWEN. They certainly do.

The CHAIRMAN. We buy our stock and we sell our stock at St. Paul and we have just as much right there as you have.

Mr. BOWEN. There is no doubt about that, but what I am claiming is that I do not believe under the Constitution the Federal Government has the right to exclude the State from agencies within it.

The CHAIRMAN. You have very excellent men in Minnesota and we are not reflecting on anything that has been done, but if you will read the hearings you will find some things referred to there that are not altogether commendable. Now, the people of Minnesota are not all infallible.

Mr. BOWEN. No; not any more so than any Government employee we have.

The CHAIRMAN. And the outsiders have some rights. We ship our stock there and it goes into other States, and when you speak of the intrastate traffic in your State, it is small in comparison with the other.

Mr. BOWEN. I say it was 61 per cent for 1921.

The CHAIRMAN. It can not be 61 per cent.

Mr. BOWEN. They are the figures.

The CHAIRMAN. As you know, very little of the stock goes to the independent packers and a majority of it goes into interstate commerce.

Mr. BOWEN. I am talking about the stock raised in Minnesota, Mr. Haugen.

The CHAIRMAN. It is raised there, but it goes out of the State in interstate commerce.

Mr. TINCHER. I am interested in the subject of inspection of scales, and the worse the condition is the more interested I am in it. As I understand, you take the position that the Government is infringing on the sacred rights of the State of Minnesota in having supervision of the scales. You are not willing to trust that supervision or inspection of scales in the State, at the St. Paul stockyards, to the Government?

Mr. BOWEN. Yes; we are, if they will go far enough.

Mr. TINCHER. I was just wondering what condition you think we would be in in reference to the biggest market in the world if we had to depend upon State inspection of scales there.

Mr. BOWEN. What kind of inspection of scales do you suppose a couple of Federal inspectors can make in that large yard with the amount of stock they have going through there? They can not inspect and they can not supervise. That is a condition that is cited in the Supreme Court decision.

Mr. JONES. As I understand, the big feature of your complaint is that you want a disinterested party to do the weighing?

Mr. BOWEN. That we do; yes, sir.

Mr. JONES. And under the activities of the Federal Government, at least up to the present time, they have not had the weighing done by a disinterested party?

Mr. BOWEN. They have not, and under this ruling it goes back into the stockyards company, who are the packers.

Mr. SINCLAIR. Do you believe that the stockyards company, under Federal supervision, are going to do the weighing and the inspecting?

Mr. BOWEN. Their rule provides for that. I read it just before you came in.

Mr. SINCLAIR. Then your contention is well founded, I think.

The CHAIRMAN. Now, what is your contention? Is it your contention that the Federal Government should do the weighing unless you are permitted to do it?

Mr. BOWEN. No; their claim is that they can not do it under the act.

The CHAIRMAN. What is your contention?

Mr. BOWEN. I will say this, if you had provided in your act for the Government to do the weighing, we would not be here before you.

The CHAIRMAN. We did not provide for it.

Mr. BOWEN. Yes.

The CHAIRMAN. Now, your contention is that we should amend the act and require the Department of Agriculture to do the weighing.

Mr. BOWEN. No. My contention is that you should clarify the act and recognize your State activity.

The CHAIRMAN. Do you mean clarify it by turning it over to the State Government? That was not the purpose. The very purpose of this act, and the very first thing that the committee decided was that the Secretary of Agriculture should be given exclusive jurisdiction, so that if there was anything wrong we would know where to put our fingers on the party responsible.

Mr. BOWEN. You have recognized in the act the fact that there are such things as State agencies and have provided for cooperation.

The CHAIRMAN. You refer to cooperation, and there is nothing in the act to prevent cooperation now. Mr. Morrill stated here the other day that there can be cooperation. The Bureau of Animal Industry, for instance, cooperates with your people in the inspection of cattle.

Mr. BOWEN. Yes; and so does the grain inspection department.

The CHAIRMAN. They can employ you at a nominal salary and make you their representative if they have the disposition to do it; but evidently the department does not want to cooperate with you.

Mr. BOWEN. No; what we are kicking on is that the Secretary of Agriculture personally said that he did desire to cooperate, but under this opinion he could not.

The CHAIRMAN. If he desires, he can do it. That is all there is to that.

Mr. BOWEN. Not under the opinion he has been given.

The CHAIRMAN. That refers to a delegation of power and cooperation and delegation of power are two different things.

Mr. BOWEN. The interpretation that this is a regulatory authority is correct, and therefore he is not going to operate or manage the business.

The CHAIRMAN. The Secretary of Agriculture would never undertake to ignore one section of the law and try to enforce another. The law is plain on that.

Mr. BOWEN. I do not know what you have in mind but I am making no claim of that kind. I have no quarrel with the Secretary of Agriculture. I have gone down there in the kindest way, but I will tell you that we have a great question up here and it has reached not only my State but every one of the States, not on this question but on other questions that are coming up in reference to conflicts between State and Federal rights.

The CHAIRMAN. You have no quarrel with the Secretary of Agriculture but, after all, you do not seem to get together.

Mr. BOWEN. It is because he says he is not a lawyer and that he takes the opinion that is given him.

The CHAIRMAN. But the opinion that was given was based on an entirely different thing from what you are contending.

Mr. BOWEN. No; I do not think so.

The CHAIRMAN. What the law provided for was cooperation.

Mr. BOWEN. Yes.

The CHAIRMAN. And you insist upon a delegation of the power and upon a division of authority between the two.

Mr. BOWEN. No.

The CHAIRMAN. That is what the opinion was based on.

Mr. BOWEN. No; I do not insist on any such thing and have not.

The CHAIRMAN. I am simply taking your own statement for it.

Mr. TINCHER. What you are complaining of is an order that the Secretary has made pertaining to the stockyards weighing the cattle, and, as I understand it, you now want us to amend this law because already the administration under the Secretary of Agriculture is sufficiently unsatisfactory to you that you want us to amend the law.

Mr. JONES. Let me ask you this question: Would you be satisfied with an amendment that did either of these two things—either permitted disinterested parties as State officials to do the weighing or permitted disinterested parties as Government officials to do the weighing?

Mr. BOWEN. That is a question I would not be in a position to answer. I am down here as a representative of the State which has passed this law and I am endeavoring to uphold laws.

Mr. JONES. Do you think it would be better to have the Government officials to do the weighing than for the stockyards themselves to do the weighing?

Mr. BOWEN. Ultimately, yes.

Mr. JONES. But your contention is that under the law as it is operating at the present time, and under the order issued by the Secretary of Agriculture, in your stockyards at least the weighing has been taken out of the hands of disinterested parties who are State officials and have no interest in the transaction and placed in the hands of the stockyards themselves.

Mr. BOWEN. Yes; that is the situation.

Mr. SINCLAIR. And the stockyards company represents and is the packing interests.

Mr. BOWEN. One of the parties to the transaction of sale.

Mr. SINCLAIR. Then you could not expect a fair deal and I can not see why that state of affairs would not be to the detriment of every shipper that ships into that yard.

Mr. RAINEY. Under this act the Secretary of Agriculture has the right to have governmental supervision of those scales?

Mr. BOWEN. Supervision, yes; and he can supervise our weighing.

Mr. RAINEY. And has the Government some representative there now in the St. Paul yards that supervises the scales?

Mr. BOWEN. I understand so. I understand they have a representative there.

Mr. SINCLAIR. In other words, Mr. Bowen, there is no reason why the Secretary of Agriculture could not cooperate with the State agency that is established in the South St. Paul yards just as well as they could cooperate with the stockyards company as they propose to do.

Mr. BOWEN. That is my contention.

Mr. SINCLAIR. Or as the order says they are going to.

Mr. BOWEN. Yes.

Mr. RAINEY. With governmental supervision of the scales, it is impossible for the stockyards company to take advantage of the shipper in the matter of weights, is it not?

Mr. BOWEN. Well, I am not making any charge against the stockyards company, but I would say, yes, it is, because one man can not supervise 18 scales through which two or three hundred drafts are passing every day.

Mr. RAINEY. Could not the Secretary of Agriculture have 18 men there, if necessary?

Mr. BOWEN. Yes; he could have 18 weighers. That would answer.

Mr. RAINEY. And they could just as satisfactorily attend to the weighing as the railroad commission?

Mr. BOWEN. I have not any doubt but what that is so; yes. And if your act provided for that we would not be before you.

Mr. RAINEY. Then, following that out further, suppose the other States should decide, like Minnesota, to have a railroad commission, that would entail a great many additional assistants and would cost considerable money.

Mr. BOWEN. No; you would have to have the same men that are operating the scales now.

Mr. RAINEY. But the railroad commission makes a special charge for weighing hogs, cattle, calves, and sheep, do they not?

Mr. BOWEN. No; we charge for the cost, just like they charge in every yard in the United States, only we label what it is for.

Mr. RAINEY. But previous to the railroad commission there, there was not an additional charge of 2 cents per head, was there?

Mr. BOWEN. No; but they did incorporate it in their yardage charge, and to-day we have fixed a separate weighing charge and we have lowered the yardage and feed charge.

Mr. TINCHER. What is the yardage charge now?

Mr. WELLS. Thirty cents on cattle.

Mr. TINCHER. What is it on hogs?

Mr. WELLS. It is 10 cents on hogs and 7 cents on sheep.

Mr. TINCHER. That is higher than any other yards in the country, is it not?

Mr. WELLS. They have put in an application for an increase of 5 cents, and it was denied by the commission, and that is one thing they are very much against us for.

Mr. TINCHER. But I say they have a higher charge there than anywhere else, have they not?

Mr. WELLS. No; Chicago is 5 cents higher.

Mr. RAINEY. This committee was confronted with this condition when we wrote the bill: The shippers in various States were complaining about injustices and practices at stockyards that were unsatisfactory to them and they came down here and we wrote a bill, after a couple years' time, and they thought it would be better to have Federal control. We have written this bill and it has not had a chance even to function yet, and the Secretary of Agriculture has not had an opportunity to even work it out, and now come amendments. My idea is that if you start to amend the bill, the various States, all just as selfishly interested as your commission up in St. Paul, will come here and the cost is bound to increase, because there must be an additional cost if all the States have different commissions, and that cost will eventually be passed on to the consumer.

Mr. BOWEN. No; I can not agree with you there, but that is a difference of opinion between us. I still believe that the State has some rights.

Mr. RAINEY. I am with you on the matter of the invasion of State rights. I think Congress has gone too far.

Mr. BOWEN. Within the next two or three years it is going to be one of the bruning issues in this country.

Mr. RAINEY. But this shipping proposition is so intertwined with interstate commerce that it is very difficult for the Supreme Court even to get away from it and say what is interstate and what is intrastate.

Mr. BOWEN. I am willing to take the interpretation of that act as handed down by the Supreme Court, as I will have to do, and I do not believe it is against our proposition at all. Just let me cite you a few cases along this line.

Mr. RAINEY. I will, if you will just pardon me for a moment. The Supreme Court passed on the act the other day.

Mr. BOWEN. We recognize its validity. We went down to the Secretary of Agriculture and said, "We recognize the validity of your act and do not contend it is unlawful." We were not in the Supreme Court contending that it was unconstitutional and we could have gone there. We have cases in the Federal court in Minnesota and also in the State court, but we did not contend that the law was unconstitutional. We contend that we can operate with that law.

Mr. TINCHER. You would not advance State rights to the extent of saying to the people of Texas who have cattle to sell that they must sell them at Fort Worth, would you?

Mr. BOWEN. No; that would be unconstitutional.

Mr. TINCHER. And considering the fact that one of the greatest territories in this country that produces meat for the country is a portion of Texas which does not care to patronize the Fort Worth market at all and has to go into interstate commerce for a market, does not that lead you to think that probably this is one of the subjects in which the Federal Government could very properly exercise its function and protect those people by laws controlling interstate commerce?

Mr. BOWEN. It has. Probably the difference between you and myself is that I recognize there is such a thing as a supervisory control of any commission or of any department, and there is also the matter of operating the facilities within that State that is not in itself meant to be done by a regulatory body.

Mr. TINCHER. How many scales are there in the St. Paul yards?

Mr. BOWEN. Eighteen scales, I understand.

Mr. TINCHER. And there will, of necessity, be 18 weighers.

Mr. BOWEN. Yes; maybe more; I do not know.

Mr. TINCHER. Now, the scales will be inspected by somebody.

Mr. BOWEN. We have a separate scales department, and it is affiliated with your Bureau of Standards here.

Mr. TINCHER. They will be kept in condition by somebody and it will probably be impossible to have those scales so that an inspector will not find some of them slightly out of balance every once in a while.

Mr. BOWEN. Oh, yes.

Mr. TINCHER. And that would happen without any crooked work on the part of anybody.

Mr. BOWEN. I do not accuse any of these people of crookedness.

Mr. TINCHER. Now, in order for the packer to steel weights off of the shipper through owning the stockyards scales, ultimately he must reach the boy that is weighing cattle over the scales in order effectively to steal weights off of the producer in that way. He must get to that boy and have him give crooked weights on the scales.

Mr. BOWEN. Oh, we are not accusing anybody of that. We have weighers there and we require them to be bonded in the sum of $5,000.

Mr. TINCHER. Do not the stockyards companies require their weighers to be bonded, too?

Mr. BOWEN. I do not think so. I never knew of it.

Mr. RAINEY. Does not the agent for the shipper, who is the commission man, have a representative at the scales also to see that the shipper receives the proper weight?

Mr. BOWEN. I suppose so, but just let me read from page 8 of Judge Taft's decision as to some of the evils:

"Another evil which it sought to provide against by the act was exhorbitant charges, duplications of commissions, deceptive practices in respect of prices, in the passage of the live stock through the stockyards, all made possible by collusion between the stockyards managements and the commission men on the one hand and the packers and dealers on the other."

This is the language of the opinion of the Supreme Court.

Mr. RAINEY. That is repeated or reiterated from the finding of the Federal Trade Commission?

Mr. BOWEN. Yes; and the evidence before your committee. Now, let us go a little further and see whether or not upon this decision——

Mr. RAINEY (interposing). The Federal Trade Commission did not get very far before this committee in some of the statements they made.

Mr. BOWEN. I do not know about that. That is in the opinion and not in the statement.

Mr. RAINEY. They made a lot of charges that were not proven.

Mr. TINCHER. They went far enough to furnish considerable information to the committee.

Mr. BOWEN. I know that the stockyards company and the packers at South St. Paul have been in favor of a Federal law and against us. Here is a heading in the Minneapolis Tribune referring to the decision of the Supreme Court:

"South St. Paul hails decision as victory—South St. Paul live-stock commission men win in their fight against State control of the industry as a result of the decision yesterday of the United States Supreme Court declaring the Federal packers act constitutional."

Did you ever hear of the packers hollering about anything that was against them?

Mr. TINCHER. We heard the packers holler for a good many years about any Federal control law and you are not in position to come down here and make us believe that the packers wanted us to pass a Federal-control law.

Mr. BOWEN. I do not know how they were in the other markets, but I know how they were in South St. Paul.

Mr. TINCHER. I concede that you had taken an advance step in stockyards regulation in Minnesota, and we did the same thing in Kansas. The trouble with our law was that the Supreme Court and the Federal court had a chance to get a whack at it and have not yet gotten a whack at your law.

Mr. BOWEN. They knocked it out.

Mr. TINCHER. And I think any fair-minded lawyer will say that under the Taft opinion they will knock yours out, too.

Mr. BOWEN. No; we profited by the mistakes you made in the Kansas law.

Mr. TINCHER. Now, I take it that you take the same position that Mr. Green took. You are opposed to the packer control act.

Mr. BOWEN. No; I am in favor of it.

The CHAIRMAN. Not you, but the stock men of St. Paul?

Mr. BOWEN. I am simply quoting what the paper says.

The CHAIRMAN. But you coincide with their views?

Mr. BOWEN. Oh, no; I do not coincide with their views at all.

The CHAIRMAN. You told us the packers of your State were in favor of that legislation.

Mr. BOWEN. I am just reading to you what it says in the paper. And I would like to file with you——

The CHAIRMAN. Are you in accord with the sentiments expressed in this paper?

Mr. BOWEN. No; not at all. I am not in accord with the sentiments expressed in that paper.

Mr. TINCHER. Then what do you bring it in here for?

Mr. BOWEN. I am just giving you my views.

Mr. TINCHER. The writer for the paper may get $20 a week, or he may get $40.

Mr. BOWEN. I am just giving you that expression of their views. I would like to file in here the series of articles that were written.

The CHAIRMAN. I think we had better have everything incorporated.

Mr. BOWEN. You may have it incorporated if you wish, but I will not, because I do not agree with the views of that paper.

The CHAIRMAN. Let us lay that aside. Let us get down to brass tacks. What are you for? Are you for a State or Federal weigher, or are you for supervision?

Mr. BOWEN. I am speaking in support of this amendment before the committee.

The CHAIRMAN. We have been talking here for three days, and I want to find out where you stand on this. Are you for a State weigher or Federal weigher, or are you for supervision, as provided for in this bill?

Mr. BOWEN. I am for supervision by the Federal people of the State weighers.

The CHAIRMAN. That is, you are for a State weigher and Federal supervision?

Mr. BOWEN. Certainly. I am here in support of this amendment.

The CHAIRMAN. You are for a State weigher?

Mr. BOWEN. Yes; I am supporting this amendment.

The CHAIRMAN. Well, we are talking about Federal legislation. This bill takes in the whole country. Your contention is then that there should be a weigher at every scale?

Mr. BOWEN. Yes.

The CHAIRMAN. Not alone in your State, but in every State where there is a stockyards. You are for a fair deal in your State, of course, and you would be for the same thing in every other State, would you not?

Mr. BOWEN. Surely.

The CHAIRMAN. And that would mean that you would have to have a weigher at every scale?

Mr. BOWEN. Yes, sir.

The CHAIRMAN. That is what you are contending for. Now, this bill does not provide for that?

Mr. BOWEN. No.

The CHAIRMAN. It provides for supervision. Now, what would be the cost? Have you estimated the cost? If it is necessary to have a weigher to weigh the stock, isn't it necessary to have a weigher also at every grocery store to weigh the coffee and the sugar and everything that is weighed out in the store? Are you aware of the fact that scales in grocery stores are short weight?

Mr. BOWEN. No, but I know something about it. We have a department that looks after it. But you are talking about a different business; I am talking about a public utility that is subject to regulation.

The CHAIRMAN. But that is a private business.

Mr. BOWEN. Oh, no.

The CHAIRMAN. Oh, well, when I ship a car of stock to market it is just as much a private business——

Mr. BOWEN. But this is a public utility, which is subject to regulation.

The CHAIRMAN. And you want to get away from that.

Mr. BOWEN. No, I do not.

The CHAIRMAN. Well, if it is your contention that we should have a weigher at every scale that is a proper question to consider. Now, then, what are your complaints? What is your reason for insisting upon a weigher?

Mr. BOWEN. My complaint is that the Secretary of Agriculture has not recognized a proper State department and a proper State function——

The CHAIRMAN. Well, please answer the question. You know the difference between a weigher and the Secretary of Agriculture. What are your grievances? You are not satisfied with what is being done. Now, what are your grievances? Are they giving short weights?

Mr. BOWEN. Why, no; I would not say that they do. I say that those scales were out of order before we went in there.

The CHAIRMAN. Why do you want a State weigher or a Federal weigher there now?

Mr. BOWEN. For the reason that the laws of the State of Minnesota provide for it, and I am a State official down here to uphold those laws.

The CHAIRMAN. Oh, well, you will have to go to your own State legislature and State courts for your State laws.

Mr. BOWEN. If you will wait just a moment, Mr. Chairman, I will read some decisions. The decision just handed down by Mr. Chief Justice Taft——

The CHAIRMAN. We are talking now about the bill that is before us, not about the decision just handed down. Let us settle this weighing proposition. Shall weighing be done by your State weighers or by Federal weighers?

Mr. BOWEN. By supervision of the State weighers—if that answers your question.

The CHAIRMAN. Do you contend you should come down here and do the weighing here? You might just as well contend that.

Mr. BOWEN. Oh, no; the State of Minnesota has no authority down here.

The CHAIRMAN. Well, they do not seem to have any in the stockyards at St. Paul, either.

Mr. BOWEN. Yes; we have still got it. We are still there.

Mr. SINCLAIR. Isn't it a fact that you want the packer control legislation to prevail all right, but you want the Secretary of Agriculture to cooperate with an agency that is already established in the South St. Paul yards; that is, a disinterested State agency that is doing the weighing and inspecting; rather than cooperate with a private stockyards company, which always will cause friction with the shippers, which friction is the result of all packer legislation?

Mr. BOWEN. Yes; that is it.

Mr. SINCLAIR. That is your point?

Mr. BOWEN. That is our position; yes, sir.

Now, Mr. Chairman, I will finish very shortly. I just want to call your attention to some of the cases that recognize just what we are contending for.

In the case of Foster *v.* New Orleans (94 U. S. 242) the Supreme Court said:

"In expressing these views, we have no purpose to impugn anything heretofore said by this court as to the power of the States to establish inspection, quarantine, health, and other regulations, within the sphere of their acknowledged authority. The constitutional validity of such regulations is as clear as the power of Congress to establish regulations of commerce. It is no objection to the former that both operate on the same subject."

The CHAIRMAN. That is exactly what is being done now in the department.

Mr. BOWEN. And in the case of Reid *v.* Colorado (187 U. S. 137):

"It should never be held that Congress intends to supersede, or by its legislation suspend, the exercise of the police power of the States, even when it may do so, unless its purpose to effect that result is clearly manifested. This court has said—and the principle has been often reaffirmed—that 'in the application of this principle of supremacy of an act of Congress in a case where the State law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive.'"

In the case of Savage *v.* Jones (205 U. S. 501) it was said:

"But the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulations and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress, fairly interpreted, is in actual conflict with the law of the State. This principle has had abundant illustration."

Mr. JONES. That does not seem to bear out at all the construction that has been placed upon it by the solicitor for the Department of Agriculture?

Mr. BOWEN. I do not think any of these do; no.

Taking the case of Hopkins *v.* the United States, which is cited in Chief Justice Taft's opinion, they recognize that all of these agencies constitute interstate commerce; but as I read his opinion he specifically says that any one of them is intrastate commerce when by itself, and it was because of the different purpose of the act from what the transaction was in the Hopkins case that they now uphold this act without overruling the Hopkins case.

That, gentlemen, practically concludes what I have to say. I would like to have you hear Mr. Thompson, State supervisor of scales.

(The newspaper articles submitted by Mr. Bowen are here printed in full, as follows:)

STATE AND NATION FIGHT AT LIVE-STOCK CENTER FOR CONTROL OF BIG INDUSTRY.

(By Roscoe B. Fleming.)

The South St. Paul stockyards, the great live-stock market through which is marketed live stock raised by hundreds of thousands of producers in six northwestern States, is among those taken over by the Federal Government under the so-called packer control act passed last year by Congress.

Federal versus State control—the latter instituted in 1919—is now being fought out in at least two courts, and will be carried to the United States Supreme Court before the State relinquishes its grasp, but lawyers and others privately predict a victory for Federal control and abolishment of the State system as the outcome.

PRODUCERS PERTURBED.

The question now being asked by thousands of producers who market here is: "What effect will Federal control have upon South St. Paul as a market through which I must sell my stock?"

Here are answers obtained from several men interested in the State-control question, and others whose opinion is authoritative, backed by many facts:

1. It will be, in reality, control by the packers and commission men—the very agencies the law was designed to curb.

2. It will put the yards back into the unfavorable condition which three years ago caused the practically unanimous demand of producers for State control, resulting in the legislature being forced to pass the State control act.

3. It will set back 10 years or more the principle of State control of public markets in Minnesota.

COMMISSION MEN ON THE JOB.

These men cite the following facts as backing up their belief:

Of three men appointed so far from South St. Paul under the Federal administration of stockyards, one, holding the most responsible position, is a former South St. Paul packer and commission house employee, who lobbied for those interests at the State legislature last winter.

The two others are former employees of commission firms or the stockyards company in South St. Paul. The present Federal supervisors of the South St. Paul yards—not a South St. Paul man—is a former employee of a packing company in Chicago.

Since Federal control was instituted over the country on August 15, 1921, there has been just one important ruling made by the Secretary of Agriculture for the conduct of stockyards. These great live-stock markets have practically been allowed to "go it alone."

NO LOCAL POWER.

Local supervisors have no power except to report to Washington. This means that every and any complaint of a producer or shipper, settled unsatisfactorily to him by the live-stock exchange, must be sent clear to Washington before being acted upon.

Out of 33 commission firms in the yards now all but 6 have refused to be further bonded by the State supervision department under the bonding provisions passed by the 1919 Minnesota Legislature, and the shippers only protection now is in the bonds required by the South St. Paul live-stock exchange. A recent commission firm failure showed in that instance the bond was only half enough to protect the shippers.

Commission men and the stockyards interests themselves are fighting to be freed from State control and to go under Federal supervision.

Men barred from working for commission firms and elsewhere in the yards by the State supervisors for alleged dishonesty and sharp practices are already back at work.

These and many other facts will be brought out further in future articles, but first some idea will be given of the magnitude of this great market that has grown up at the back door of the twin cities, almost unnoticed by the general public.

WIDE TERRITORY AFFECTED.

Through South St. Paul flows a river of live stock, garnered off not "a thousand hills," but a thousand thousand, in six States. which amounted in 1921 to 3,832,107 head, or 58,470 cars, almost two animals for every inhabitant of Minnesota. Nor was this the record year. In 1919, 81,440 cars were received.

Sixty-one per cent of all this stock in 1921 came from Minnesota, with North and South Dakota, Iowa, and Wisconsin contributing the rest.

The market was fourth in the United States in 1920, being topped in the amount of business done only by Chicago, St. Joseph, and Omaha. It was fifth in 1921.

It is the leading "feeder" market in the United States; that is, in animals sold to be taken out to farms and fed for future sale. It is the leading cow market.

Following are the figures for 1921 on various classes of animals:

Cattle	623,515
Calves	361,311
Hogs	2,209,568
Sheep	632,865
Horses	4,848
Total	3,832,107

MUCH MONEY INVOLVED.

Shippers and producers paid last year $2,950,000 in all charges and commissions—$1,750,000 in commissions and $1,200,000 for hay and bedding—and were paid for the live stock which they marketed approximately $85,000,000.

The physical magnitude of the South St. Paul plant is worthy of the magnitude of the industry.

Standing at the top of the five-floor Exchange building in South St. Paul, the onlooker sees before him the vast bulk of the Swift & Co. building to the left, the bulk almost as vast of Armour & Co. at the right, and the acres and acres of pens below him.

THOUSANDS EMPLOYED.

Covered, sloping runways, seemingly miles in length, lead up to the packing company buildings from the pens, and immediately below the observer is the railroad track along which come dozens of long trains each day, loaded with cattle, hogs, and sheep from the Northwest live-stock empire.

The whole vast panorama is circled by the majestic Mississippi, and beyond it, miles away, rises the lofty amphitheater of the hills. It is like a Roman arena, in which millions of animals are killed each year, instead of hundreds, and are killed scientifically as a business by which thousands of men make their living, instead of as a sport.

Farmers Pay Big Excess to Sell Their Live Stock While Judge Hears Suit.

(By Roscoe B. Fleming.)

The history of the attempts by the people of Minnesota to institute public control over the great stockyards at South St. Paul, and the resulting tangles, in which the market is still enmeshed, is a long history. It throws a bright light on what Federal control probably will mean.

Following the precedent of the grain trade, the men controlling the South St. Paul market had for years claimed the right to run, as a private business, this great public enterprise, through which is bought and sold the product upon which thousands of families depend for a living and millions of families for the meat on their tables.

Agencies controlling the market are two:

1. The South St. Paul Live Stock Exchange, a closed corporation made up of the 30 or more commission firms and many speculators, who buy and sell the animals brought in and collect almost $2,000,000 a year in commissions. Members are forbidden to trade with outsiders.

2. The South St. Paul Stock Yards Co., a private corporation, of which the controlling interest is said to be held by Swift & Co. This owns the physical plant of the stockyards and rents pens and sells hay, feed, and bedding to the shippers for their stock. This company collected $1,200,000—at prices claimed by the State to be exportionate—last year.

Complaints similar to those made by grain growers for many years against the chamber of commerce were made against this private control of the market by the producers. For years bills were introduced in the State legislature for public control only to fall by the wayside under lobby attacks.

COMPLAINTS MANY.

The major complaints were divided under three heads:

1. That commissions charged for sale and purchase of live stock were extortionate.
2. That hay, grain, and bedding were being sold to shippers and producers at prices ridiculously above the market.
3. That the weighing was inefficient and, worse, that it was often "loaded" against the producers and shippers.

The angry producers forced action, and the 1919 legislature passed a State control bill. It gave the State railroad and warehouse commission the right to supervise weighing and to set hay, grain, and bedding charges. But this was not enough, and, being called in special session in the fall of 1919, the legislature passed another bill giving the commission the right to set commission charges. R. J. Wells had taken charge of State supervision on July 1, 1919.

CONDITIONS STILL BAD.

It looked as if the South St. Paul situation were out of the woods. But it was not. Nor is it yet. In fact, with certain exceptions, the commission men and the stockyards company have gone calmly ahead, charging the same old extortionate prices and rates, ever since, and are doing so yet. The exceptions are the Minnesota Central Association and the Equity Exchange, which are charging State legal rates.

The Lever Act, the Federal war time stockyards control act, was then in force. Rates, both of commissions and feed charges, were ordered lowered by the railroad and warehouse commission in December, 1919, about 20 per cent, and the stockyards interests immediately appealed.

The contested money, representing the difference, was placed in escrow while the case went up and through the State supreme court. The latter held, early in 1921, that the Lever Act superseded that State act, but that the latter was constitutional if there had been no competing Federal act. But that didn't help the producers any. Some $200,000 of their money, representing the difference between the rates the State attempted to enforce and the former rates, dropped into the pockets of the stockyards interests with a jingle.

FEAR ADVERSE DECISION.

On March 3, 1921, the United States Supreme Court held the Lever Act unconstitutional, in so far as it related to stockyards. The State tried rate regulation again. Rates were lowered about 25 per cent this time, at a hearing concluded last July.

By that time the present packer control act had been passed, to take effect August 15, and the stockyards interests appealed again. Again that 25 per cent went into escrow, and there it is resting. It now amounts to about $250,000, according to State figures—producers' money, charged in "extortionate rates," which they probably will not see again.

For, although no lawyer will be quoted in public as predicting the action of a court, they will tell you privately that they expect the United States Supreme Court to hold the packers' control act constitutional, and expect the State court again to rule that it takes precedence over the State act. And the $250,000 will jingle gently into the pockets of the South St. Paul interests instead of back to the producers. There is no intimation that the Federal department intends to set prices yet at least.

That shows what Federal control will probably do to the State price schedules. There are several more State functions.

First is the weighing of live stock. The State weighing system, it is conceded by producers' and farmers' organizations, is a big benefit. Officials claim they have weighed 1,226,000 lots of live stock without a discoverable error. However that may be, producers are well satisfied with the weighing system.

Under Federal control, weighing would go back into the hands of the private interests, with no supervision except that of a single Federal supervisor—the former employee of a Chicago packing company. Producers' organizations feel that this might mean resumption of all the old evils.

GET TEMPORARY INJUNCTION.

The State has asked for an injunction against private weighing, in the Dakota County district court, and the stockyards' interests have retailiated by asking an injunction against State weighing in the Federal court in St. Paul. Judge Albert Johnson granted a temporary injunction in the former case, so that the State con-

tinues to weigh, but both cases are under advisement so far as any permanent action is concerned.

Other State activities, conceded to be valuable to producers, include the hearing and adjusting of complaints made by producers and the installation of several rules. Among these is the "slow hog" rule. Formerly all hogs slow in action were characterized as "cripples" and $2 per 100 pounds was deducted from their price. Now they are fed, rested, and bring full price, and this practice, instituted last March, has already saved the producers $17,000, according to State estimates.

KILL STATE ACTIVITIES.

The amount to be taken off for "shrink" on certain classes of animals not all of whose flesh is good for food is also under the State department's supervision.

All these activities would be killed by Federal control.

The list of leagl actions given above does not exhaust those in which the stockyards are now involved.

Last winter the legislature passed the "open markets" bill. The live-stock exchange had a rule that members could deal only with members. This was nullified by the law. George Grisim, a member of the exchange, traded with outsiders and was fined $250 He appealed to the courts and the case is now waiting settlement in the State supreme court. However, the one ruling made by Federal authorities so far is to declare the St. Louis market an "open one."

Neither of the two separate cases on hay, grain, and bedding charges, now in the Dakota County district court, have been tried yet, and lawyers believe that decisions in all these cases will be held up until the United States Supreme Court decides on the validity of the packer control bill, which is being fought by Chicago packing and stockyards interests.

STATEMENT OF MR. W. E. THOMPSON, STATE SUPERVISOR OF SCALES, MINNESOTA RAILROAD AND WAREHOUSE COMMISSION, ST. PAUL, MINN.

The CHAIRMAN. Mr. Thompson, will you please state for the record your occupation?

Mr. THOMPSON. I am State supervisor of scales for the Minnesota Railroad and Warehouse Commission, having under my supervision approximately 600 of the larger capacity scales, of which this little bunch of 18 at the South St. Paul stockyards is but a part.

The State of Minnesota, through its railroad and warehouse commission, is testing and inspecting all of the sacles in the yards at frequent intervals, making corrections, or causing them to be made when the same are needed, in an effort to protect the shippers of live stock, the buyers of live stock, and the railway companies carrying the same, as these scales are used for the purpose of settlements between the seller and the buyer, and in the settlement of freight.

The scale department of the Minnesota commission commenced said supervision on December 4, 1919, and has continuously carried the same on daily at such yards since.

During the first year of its supervision all of the scales were found in an incorrect condition, as they were being used, notwithstanding the fact that the stockyards company was maintaining a weekly test and inspection service of all of its scales. The errors found were both in favor of and against the shippers, and in a large number of cases were large errors.

As a result of the stockyards company making over certain of these scale settings, and having repairs made to certain of these scales, results in weights have materially improved. The first year's test showed the scales correct in 4.3 per cent of the tests. The second year's test showed the scales correct in 33.7 per cent of the tests. The third year's test showed the scales correct in 55.1 per cent of the tests. This last item covers only five months of the present year, which commenced on December 1, 1921. The errors in the scales are correspondingly less as repairs and corrections are made and the scales kept in cleaner condition, and receive more frequent State tests.

The frequency of shippers complaints, now that they know that the State is constantly keeping a scale inspector at the yards and is doing the State weighing of live stock, indicates the need of an impartial supervision authority.

The yards company has not the proper nor adequate testing equipment for an accurate test of its scales, and without the State department of the commission doing this work, the results from the use of the scales with yard company testing and inspection will be incorrect weights. The loads weighed are active, surging stock.

weighed on the hoof, continually functioning on the scales, requiring a frequent cleaning, not alone of the deck or upper part of the scale platform, but of the entire scale. The wet and damp condition surrounding scales in such installations cause serious rust and dirty conditions of the scales' vital parts, which must be kept in proper shape to function.

The cost of the State scale supervision to the stockyards company for the two years which ended December 31, 1921, for the actual amount paid to the State for the service of testing, inspection, and the repairs that were done by the scale inspector, amounted to 0.0022 cent per draft of live stock weighed.

There are 18 scales in these yards, over which the two-year period stated above there were weighed 1,228,016 drafts of live stock.

As I understand it, if this present bill is not passed, or some other bill giving the State jurisdiction over these scales and the weighing of the live stock at this market, the question of the right of the State being there to perform the functions required by Minnesota's laws, will be determined in the proper court, but I can not see any difficulty in permitting a continuation of the functioning of State departments that have been inaugurated at the demand of shippers for their protection, and at the same time not interrupting the Federal regulations, which do not provide for the actual weighing of this live stock or the testing and inspection of the scales involved in the weighing of it.

The stockyards company has admitted to me that our suggestinns as to the changes in their scales were a benefit to them, in such cases, as they have carried out the suggestions made. They say that their scales are now in better condition than when we took over the supervision. Without the State supervision, unless the Federal Government will put in an equally effective system of supervision, the shippers of live stock will not secure the weights on the same they should be entitled to receive.

Supplementing what I have just said, I should like to file five statements showing tests of individual scales and the percentages correct and incorrect.

The CHAIRMAN. Without objection they will be received.

(The tables submitted by the witness are here printed in full, as follows:)

Statement of the classified results of tests of South St. Paul stockyards scales.

[Prepared by the scale department of the Minnesota Railroad and Warehouse Commission.]

DECEMBER 1, 1919, TO NOVEMBER 30, 1920.

Scale No.		Results of tests as scales were found weighing—			Total tests.	Scale No.		Results of tests as scales were found weighing—			Total tests.
Old.	New.	O.K.	More.	Less.		Old.	New.	O.K.	More.	Less.	
L	2		1	4	5	2	42		2	1	3
9	2-A		[1]1	[1]3	4	4	44		1	1	2
17	2-B			[2]2	2	6	46		[2]3	[2]2	5
11	5		3	[1]1	4	8	48		1	[1]2	3
7	7		1	1	[3]2	12	70		1	1	2
13	8	[4]1	[1]1		2	71	71				
5	8-A		1		1	10	87		1	1	2
21	21	[4]1	1		2	Cripple				1	1
3	24		2	2	4						
25	25					Total		2	21	23	46
15	29		[1]1	[1]1	2	Percentage		4.3	45.7	50	100

[1] One test, scales weighing both more and less than standard in sections.
[2] Two tests, scales weighing both more and less than standard in sections.
[3] Scale No. 7 was condemned and abandoned.
[4] These are retests following repairs. No other retests showed scales correct and needed further repairs. At first tests of all of these scales all of them were found incorrect, and in large amounts.

All of these scales, except 8-A, 21, 25, and Cripple are railroad tracks without rails.

Statement of the classified results of tests of South St. Paul stockyards scales—Contd.

DECEMBER 1, 1920, TO NOVEMBER 30, 1921.

Scale No.	Results of tests as scales were found weighing—			Total tests.	Scale No.	Results of tests as scales were found weighing—			Total tests.
	O. K.	More.	Less.			O. K.	More.	Less.	
2	1	2	[1] 2	5	44	1	[1] 3	2	6
2-A	2	1	2	5	46	2	[2] 4	1	7
2-B	1		3	4	48	1	1	1	3
5		1	[1] 5	6	70	4		1	5
8-A	3	1		4	71		2		2
8	1	[1] 3	1	5	87	1	1	[1] 4	6
21	3	1	1	5	Cripple	2	1		3
24		3	[1] 4	7	Show			1	1
25	4		1	5					
29	3	1	3	7	Total	31	27	34	92
42	2	[1] 2	[2] 2	6	Percentage	33.7	29.3	37	100

DECEMBER 1, 1921, TO APRIL 28, 1922.

2	2	1	1	4	44			1	1
2-A			1	1	46		2	2	4
2-B	3			3	48	1		[1] 2	3
5	2		1	3	70	1		1	2
8-A					71				
8			3	3	87	5			5
21	1	1		2	Cripple		1	2	3
24	4		1	5					
25		1		1	Total	27	7	15	49
29	3	1		4	Percentages	55.1	14.3	30.6	100
42	5			5					

[1] One test, scale weighing both more and less than standard in sections.
[2] Two tests, scale weighing both more and less than standard in sections.

All of these scales except 8-A, 21, 25, and Cripple are railroad track scales without rails.

Statement showing number of drafts taken over the various scales of St. Paul Union Stock Yards Co. at South St. Paul, Minn., two years, from January 1, 1920, to December 31, 1921, inclusive.

Scale:	Drafts per scale.	Scale:	Drafts per scale.
No. 2	35,483	No. 42	166,552
No. 2-a	55,498	No. 44	110,572
No. 2-b	10,853	No. 46	133,403
No. 5	50,596	No. 48	75,742
No. 8	60,362	No. 70	77,522
No. 8-a	26,404	No. 71	3,471
No. 21	37,605	No. 87	75,399
No. 24	141,596	Cripple	16,056
No. 25	23,290		
No. 29	127,612	Total drafts for period	1,228,016

Cost to yards of 0.0022 cent per draft.

A statement of the number, kind, and capacity of hoof weight scales, with the service in which they are used, at the stockyards of the St. Paul Union Stock Yards Co., at South St. Paul, Minn., together with the average pounds per draft weighed, the average number of head of stock per draft, and the classified results of official tests of said scales, as they were found weighing by the scale inspector of the Minnesota Railroad and Warehouse Commission, for the fiscal year ending November 30, 1921.

Scale No.	Kind of scale.	Beam capacity.	Stock weighed.	Average pounds per draft.	Average head per draft.	Results of tests as scales were found weighing—			Total tests.
						O. K.	More.	Less.	
		Pounds.							
2	Track	40,000	Hogs	4,925	25	1	2	[1] 2	5
2-A	do	60,000	do	4,925	25	2	1	2	5
2-B	do	60,000	do	4,925	25	1		3	4
5	do	60,000	do	4,925	25		1	[1] 5	6
8-A	D-plat	12,000	Sheep	540	6	3	1		4
8	Track	40,000	do	1,516	17	1	[1] 3	1	5
21	Wagon	20,000	Hogs	2,400	10	3	1	1	5
24	Track	40,000	Cattle	2,580	3		3	[1] 4	7
25	Wagon	20,000	Calves	360	3	4		1	5
29	Track	60,000	Cattle	2,580	3	3	1	3	7
42	do	40,000	do	2,580	3	2	[1] 2	[2] 2	6
44	do	40,000	do	2,580	3	1	[1] 3	2	6
46	do	60,000	do	2,580	3	2	[2] 4	1	7
48	do	60,000	do	2,580	3	1	1	1	3
70	do	60,000	do	2,580	3	4		1	5
71	do	40,000	do	2,580	3		2		2
87	do	60,000	do	2,580	3	1	1	[1] 4	6
C	Dorm	4,000	Hogs	240	1	2	1		3
Show	Wagon	12,000	Cattle	900	1			1	1
			Hogs	250	1				
			Sheep	90	1				
Total						31	27	34	92

[1] One test, scale weighing both more and less than standard in sections.
[2] Two tests, scale weighing both more and less than standard in sections.

All track scales are the 4-section railroad track scales.

The CHAIRMAN. Do you cooperate with the Federal Bureau of Standards.

Mr. THOMPSON. We do; we try to very closely.

The CHAIRMAN. To what extent does the Bureau of Standards test these scales throughout the country?

Mr. THOMPSON. The Bureau of Standards, as I understand it from talking them, have made no tests of live-stock scales at any market in the country.

The CHAIRMAN. But they do test scales, do they not?

Mr. THOMPSON. They do; they test scales in the State of Minnesota.

The CHAIRMAN. Can you tell us to what extent they inspect scales? You say they do not inspect any of the live-stock scales. What other scales do they inspect?

Mr. THOMPSON. They are testing all classes of scales.

The CHAIRMAN. They have people on the road all the time going through the country, have they not?

Mr. THOMPSON. Yes, sir.

The CHAIRMAN. But of course the country is large and it takes them a long time to get around to all of them.

Mr. THOMPSON. That is true.

They have tested a great many scales in the State of Minnesota. Those scales that they have tested there are railroad track scales, used by the carriers in the weighing of carload freight. They have made no tests in Minnesota or any other market of the hoof scales, over which the cattle or other live stock are weighed. I was out at the Bureau of Standards yesterday, and ascertained that fact from them. They are perfectly competent to do it, and have plenty of apparatus to do it, and can do it.

The CHAIRMAN. Of course you take in the whole state. Do you test the stock scales out in the country?

Mr. THOMPSON. My own particular department does not. Another branch of the commission's activities does.

The CHAIRMAN. But the commission has jurisdiction over it?

Mr. THOMPSON. The commission has jurisdiction over all scales in the State of Minnesota.

The CHAIRMAN. And they are being inspected throughout the State?
Mr. THOMPSON. Yes, sir.
The CHAIRMAN. What about the scales in the grocery and other stores?
Mr. THOMPSON. Those are also tested by the commission.

I would like to say here, Mr. Chairman and members of the committee, that these scales are all of the railroad-track pattern. By that I mean the same kind of scale that the railroad company uses in the freight yard to weigh its freight, with the exception that they have no rails on them. They have a wooden deck or a concrete deck and a cattle rack, and they are of a capacity of 60,000 pounds. The average draft of hogs weighed over those scales is 4,925 pounds, and the average number of head is 25. The average draft of cattle is 2,580 pounds, and the average number of head 3. The average weight of a draft of calves is 360, and the average number of head per draft 3. The average draft of sheep is 1,516 pounds, and the average number 17.

When these scales were put in—and they are the same practically in all of the other markets—they were intended to weigh a carload of stock at a time. But with the change that is coming about throughout our territory up there, with the cooperative shippers shipping such a large proportion of the stock, there is usually only a part of a carload, not a whole carload to a draft. So we are using a very large scale, of 60,000 pounds capacity, when a very much smaller scale, a very much lighter scale, would be a little more effective with the smaller load.

The CHAIRMAN. Do you contend that the smaller drafts can not be weighed as accurately as a larger draft on a large scale?
Mr. THOMPSON. Yes, sir.
The CHAIRMAN. To what extent is that true?
Mr. THOMPSON. I would direct your attention to this, in reply to your question, Mr. Chairman. It is not possible with a scale beam that is graduated to 20 pounds or to 10 pounds to merely weigh a single sheep or a single calf of 80 or 90 pounds and come within 10 or 20 pounds of the correct weight.
The CHAIRMAN. Is it not a fact that a 60-penny nail would throw those scales out of balance?
Mr. THOMPSON. Throw them out of balance? No.
The CHAIRMAN. Have you tried it?
Mr. THOMPSON. No.
The CHAIRMAN. I have seen it done. The question came up one time, and in order to prove the exactness of the scale they threw on the scale a 60-penny nail, and it threw the scale out of balance.
Mr. THOMPSON. I am afraid I do not understand your question.
The CHAIRMAN. A 60-penny nail. That would probably weigh a quarter of a pound; I could not say about that.
Mr. THOMPSON. It would probably weigh more than that. Of course, if your scale is in good condition you ought to see a perceptible change in the balance of that beam if you put a quarter of a pound on there; that is, if the scale is working properly.
The CHAIRMAN. The nail was thrown on the scale.
Mr. THOMPSON. It should make a difference.
Mr. TINCHER. Of course, the whole proposition is a hard one, and that is that with this cooperative shipping—which we are all for?
Mr. THOMPSON. Surely.
Mr. TINCHER. They have to cut up a carload of cattle into half a dozen different lots, and then they weigh them on those big scales. That is a pretty difficult thing to overcome. You can get along with the big scales for weighing the smaller bunches, but you could hardly get along without the big scales?
Mr. THOMPSON. No; we could not.
Mr. TINCHER. In the heavy shipping season I suppose they use the big scales to their capacity. At least, I know that down in the Kansas City market it would be hard to get along without the big scales.
Mr. THOMPSON. I was in the Kansas City market about two years ago, and as I recollect it your scales there are of 80,000 pounds capacity. I do not think I saw all of the scales in the yards, but I saw them weighing a single calf on an 80,000-pound capacity scale, and candidly I really believe that the man was guessing at the weight. I do not think he got it. I would not want to go to a drug store and have the apothecary use a 150-pound or 200-pound portable scale to weigh my little dose of medicine on. The situation is relativey about the same.
Mr. TINCHER. I think there may be a good deal of fraud practiced on the shippers as a result of that. That is one thing that induced me to come to Congress to help pass a packer regulation bill. There are a lot of little things like that. Of course

we can have Government supervision, but I do not know just how they will work it out. I notice your State is putting in a smaller scales.

Mr. THOMPSON. Yes; we have two or three of those smaller scales.

Now, my point before this committee is simply this, that we would like to have the Secretary of Agriculture utilize this agency. I am not concerned personally whether I stop in South St. Paul every week or every month or every two months to test these 18 scales, because I have 560 others that are claiming my attention elsewhere.

Mr. TINCHER. Well, if the Department of Agriculture wants to do that testing through the Bureau of Standards—which they have authority to do under this law—I should judge from your appearance that you would probably have no difficulty getting work with the Bureau of Standards if the State did not want you. [Laughter.]

Mr. THOMPSON. I get no revenue out of this stockyards money at all.

Mr. TINCHER. You could go to work with the Bureau of Standards to-day if you wanted to.

Mr. THOMPSON. I do not know whether they would want me or not.

Mr. JONES. How much experience have you had in this kind of work, Mr. Thompson?

Mr. THOMPSON. I have been actively engaged in this work for the commission since 1908.

Mr. JONES. You have been connected with the commission during all that time?

Mr. THOMPSON. Yes, sir; directly connected with the mechanical department.

Mr. JONES. Had you been in this line of business before that time?

Mr. THOMPSON. No.

Mr. JONES. But it has claimed practically all your attention since 1908?

Mr. THOMPSON. Yes.

Mr. JONES. You have been right with the commission all that time?

Mr. THOMPSON. Right with the commission, in the technical end of their work.

Mr. TINCHER. Since the railroad scales were put under the Bureau of Standards have you heard of any complaint of their supervision of them?

Mr. THOMPSON. No. But you have a wrong conception, Mr. Tincher, I believe. The Bureau of Standards is continuously making tests, but they have no authority to make any test of any railroad track scales anywhere except upon the request of the carrier or of the industry that owns the scale.

Mr. TINCHER. Under this packer bill, however, we gave the Secretary of Agriculture the power to use any Federal agency he wanted to in carrying out the law. I did not mention this to Mr. Morrill, but I understood they probably would have all the power the Secretary of Agriculture cared to give them over the scales in the stockyards, and I take it the Bureau of Standards would do any testing that we would appropriate the money for.

You spoke about being in the yards at Kansas City. As a matter of curiosity—having no personal interest in the matter, except once in a while—who inspected the scales at Kansas City when you were there?

Mr. THOMPSON. From the statement made to me by the different weighers in charge of those scales, the manufacturers' experts tested those scales twice a year.

Mr. TINCHER. That was how long ago?

Mr. THOMPSON. That was two years ago.

Mr. JONES. Was that the only inspection they received?

Mr. THOMPSON. Once a year the State department of weights and measures would make a test.

Mr. JONES. Of that State?

Mr. THOMPSON. Of that State; yes.

Mr. TINCHER. That was before we passed this packer law?

Mr. THOMPSON. Yes.

Mr. TINCHER. We certainly needed this law down there, didn't we?

Mr. THOMPSON. You surely did. I saw a good many things down there in that yard that were not right.

Mr. CLAGUE. How often do you test those scales at South St. Paul?

Mr. THOMPSON. We test every one of these scales that is in active service once a month or oftener upon the request of Mr. Wells, the supervisor, or upon the complaint of any shipper. Those scales that are not in service are not tested until they are ready to go into service again. If there is a large inflow of stock after a number of months, we aim to test those scales once a month, all of them that are actively in use. Before we took hold the stockyards company were actually testing every scale they had in the yards once a week. So they recognized the fact that the scales must be looked after. But they were doing it with what they thought were 3,000-pound test weights, and when we came to look them over and compare them with the cali-

brated standards of the Federal bureau we found they were not accurate. They were indulging in some testing practices that did not give the correct results.

Mr. JONES. Is that all the supervision there was of the weighing at the Kansas City stockyards prior to the passage of this packer act?

Mr. THOMPSON. I am giving you hearsay evidence.

Mr. JONES. Is that your information?

Mr. THOMPSON. I was there in the yards purely as a visitor, and I was given that information in two instances by two different weighers who were operating the scales.

Mr. JONES. Apparently the whole thing, then, was in the hands of the stockyards people?

Mr. THOMPSON. It was, no doubt.

STATEMENT OF MR. R. J. WELLS, STATE SUPERVISOR OF STOCKYARDS, ST. PAUL, MINN.

Mr. WELLS. Mr. Chairman and gentlemen, I shall not take but a moment or two of your time. I have heard some statements here during this hearing in regard to the number of employees there at our yards. We have 18 men that are weighers. They work from 8 to 10 hours every day, doing the actual, manual weighing of that stock. They are under bonds of $5,000.

Then we have four hog shrinkers, that are paid through our department. They are paid by a 15 cents a car tax on the shipper. Then we have two men on the unloading platforms and the loading platforms, one of whom is a State humane agent. Their duty is to see that the stock is properly and humanely handled at the time of loading and unloading.

Then we have two men who are going through the yards to see that the laws and regulations of the stockyards commission are carried out, to see that the hay is weighed out properly, that the corn is weighed out properly, to see that the pens are kept in a sanitary condition, etc., and any other work that we may assign to them.

Then we have four men in the office, including a stenographer. Those men that are in the office are weighers, so that in case of sickness or anything of that kind anyone of them can go right down and take a scale. That is what they are doing.

Mr. JONES. Is all that paid for out of that 2 cents a head?

Mr. WELLS. I will give you the record of that. Before we went there the stockyards company employed that same number of people. We have not added a single soul to that organization. They have cut down their office force upstairs; they do not employ several clerks that were taking care of these scale tickets and scale books. So that we have not added a single thing, and when you tell us to get out of the yard the expense will be exactly the same.

I have here a statement prepared by the chief clerk of my department. I did not want to come here and make any statement in which I might be mistaken, and so I asked him to go to his records and find out just the true state of affairs and give me a report on it. He says:

APRIL 27, 1922.

Mr. R. J. WELLS,
State Supervisor, Public Stockyards, South St. Paul, Minn.

DEAR MR. WELLS: In pursuance with your request I have prepared data and figures showing the activity of this department as taken from the records for the period of one year, beginning December 1, 1920, and terminating November 30, 1921, inclusive.

During the year, the weighing charges as collected amounted to $66,769.84. Out of this amount $7,500 was paid for hog shrinkers and approximately $8,000 paid for scale tickets and scale books. This makes a total of $15,500, which, after deducting from the sum of $66,768.84, leaves a balance of $51,269.84 to pay all expenses of the department, which includes salaries of weighers, yard inspectors, State humane agent, office help, office rental, and miscellaneous charges.

The cost of hog shrinking prior to State control was collected as a direct and separate charge by the live-stock exchange. The charge for this service was 15 cents per car on straight or mixed shipments of hogs. The same charge was made on all lots of hogs arriving at the yard other than by railroad. The cost of scale tickets and other expense of weighing was prior to State control paid by the stockyards company. In this connection, I wish to call your attention to the fact that while it appears the cost of weighing was borne by the stockyards company, the same was nevertheless collected from the shippers indirectly; that is to say, this charge was included in the charges made for yardage, feed, etc.

The stockyards company, in a letter to this department, dated December 8, 1919, admit that the actual cost of weighers, based on the figures of 1918, was $14,350. This,

of course, does not include the cost of scale tickets and scale books, which, as before stated, amounts to approximately $8,000 per year.

During the year 4,187,170 animals passed over the scales. Dividing the sum of $51,269.84 by this number results in an average charge per head of approximately 1.2 cents. So far this represents the extra charge made to shippers for the maintenance of this department. However, I wish to call to your attention that while the amount of $51,269.84 was collected to defray expenses of weighing and supervision, these same shippers have in reality saved more than was collected for this maintenance, as will be shown hereafter.

On the 19th day of March, 1921, the railroad and warehouse commission adopted a new system of handling slow hogs arriving at the yard. Since that time a direct saving of $17,900 has been made for shippers to this market by reason thereof. Prior to this all hogs not able to leave the unloading chutes with the rest of the animals were tagged as "cripples," and as such sold at $2 per hundredweight loss to shippers. The plan adopted by the railroad and warehouse commission is to have those hogs not crippled but merely "slow" hauled to the scales and weighed with the rest of the load, thereby benefiting the shipper in getting the same price for these hogs as the others sold for.

Under the State law all commission merchants operating on this market must give a bond to the State of Minnesota to protect the interests of the shippers. As a result of this law a saving of $20,000 was made possible in the recent failure of Thuet Bros., commission merchants, who were bonded to the State of Minnesota in the sum of $20,000.

On July 18, 1921, the railroad and warehouse commission made an order reducing the commission charges approximately 25 per cent. Only two of the commission merchants have so far complied with this order, namely, the Equity Cooperative Exchange and the Central Cooperative Commission Association. This has resulted in a direct saving to shippers of $24,502 by the above two firms. Since January 1, 1922, to date, this has resulted in an additional saving of $21,971.

In summing up all the figures above mentioned and putting them in tabulated form, we have as follows:

Cost of hog shrinking, formerly collected by live-stock exchange, based on salaries paid to shrinkers by this department	$7,500.00
Cost of scale books and tickets, formerly collected by stockyards company, based on amount paid by this department for similar service	8,000.00
Cost of weighers prior to State control, formerly collected by stockyards company	14,350.00
Total	29,850.00
Amount saved on slow hogs	17,900.00
Amount saved on account Thuet Bros. bond	20,000.00
Amount saved on commission charges	24,502.00
Total	92,252.00
Collected by department	66,769.84
Actual saving to shippers	25,482.16

NOTE.—The amount saved on commission charges since January 1 to date is not included in above table, and amounts to $21,971 additional.

From the foregoing table you will see that it has cost the shippers to this market not a cent for weighing and supervision as done by the State, and, on the other hand, they have actually saved $25,482.16.

As you know, the railroad and warehouse commission has from time to time ordered reductions in feed and commission charges charged to shippers to this market. In each case, the stockyards company and live-stock exchange have refused to comply with these orders. As a result, there was on December 20, 1921, about $85,000 held in escrow pending the ultimate decision by the courts to which appeal was taken. In the absence of exact figures, I can not state the exact amount now being held in escrow, but I think it to be approximately $200,000. In the event these cases are decided in favor of the State, this money will be refunded to the shippers.

In conclusion, I wish to state that in addition to the financial savings, the shippers to this market have benefited in many other ways through the efforts of this department acting under the supervision of the railroad and warehouse commission. Very frequently complaints with reference to local stockyards, excess freight charges, inability to obtain cars for shipment of stock, arrangement of train schedules, etc., have been filed in this office. Each case reported has been given prompt attention

by the railroad and warehouse commission. The shippers have also benefited by the activities of a State humane officer employed by this department to prevent as much as possible the bruising of animals at the time of loading and unloading; while in the pens, or being driven to or from the yards. Also in seeing that they are properly fed and watered, and in general that they are humanely treated.

Very respectfully submitted.

E. SWANSON, *Chief Clerk.*

Mr. TINCHER. Do they still permit them to use the spike in the of a stick?

Mr. WELLS. No, sir. When we first went to the yards we found men there carrying the side stakes out of some of the cars. You know, if there is any animal that will make a man mad it is calf that you get started out of a car and that runs back in the car. They would take and beat up those animals with those clubs. These men, the employees of the stockyards company and of the commission men, would lose their temper and the animal would get the benefit of it. We went to the State society for the prevention of cruelty to animals and got a humane officer appointed and properly sworn in, and we pay his salary out of this weighing charge. He has the same power as a sheriff to make arrests, and they all know it. So that is all stopped now. If a man is guilty of any such conduct, he will be immediately taken to court.

In regard to this bonding proposition, gentlemen, I want to call your attention to some things that did actually happen there. Take this case of Thuet Bros. They were under bond, a continuous bond, to the State of Minnesota. They failed, by the bank reaching out and taking their money. When they thought it was the proper time they reached out and took it, and our court has held there that they have a perfect right to do that in the regular course of business. So that there is a period between the time that the stock is sold and the time the money is in the bank that you have no security whatever outside of a bond.

Mr. TINCHER. You appreciate, do you not, Mr. Wells, that one of the objects of this law was to permit the Secretary of Agriculture, by regulation, by rule, to absolutely cure that evil, which not only existed at your market before the State took control but which exists everywhere? Is it not true, though, that since your State has been in charge and you have required a bond, you have had some general failures in which the shipper lost?

Mr. WELLS. No. We had one case where the bonding company down in Mr. Haugen's State went by the board. That was the fault of the bonding company itself.

Mr. TINCHER. I know, but they lost money?

Mr. WELLS. I was just going to call attention to that fact. There is $150,000 a day that some of those firms have in their hands, and if they decide to go out of business they will go out with that $150,000 in their hands. In order to prevent that the Railroad and Warehouse Commission of Minnesota has put in effect an order requiring every commission firm to put their money in the bank as trustee. Unfortunately, we only have two firms that comply with our orders; the others are outlaws, you might say.

Mr. TINCHER. I think they will all comply now with the Federal Government's orders?

Mr. WELLS. Certainly they will; there is no question about that.

Mr. TINCHER. And if the Secretary of Agriculture orders them to return a man's money—that is, not to handle that money so that anyone else can obtain a lien on it——

Mr. WELLS. If they can do that; if they have authority to do that.

Mr. TINCHER. It is to be hoped—I am not quarreling with your requirement of a bond, you understand; I commend you for it. My point is this: We are trying to fix it, and did by this law, so that all the commission houses in all the yards of the United States would be compelled to account to the shipper for his money and put themselves in shape so that there would not be any question about the shipper getting his money.

Mr. WELLS. I certainly hope that the administration of this act will be carried out just as you expect it to be. I think the live-stock people of the country are entitled to that.

Mr. TINCHER. We waited 30 years for the States to do it; not only that, but we had States that were progressive enough to try to do it, and then the courts held—I am not criticising them at all, because it was so interwoven with interstate commerce that they had to hold our State laws invalid. Finally Congress took action. So I am sure that you do not want to do anything to this law that will hamper the Secretary of Agriculture in enforcing it.

Mr. WELLS. Not a particle. We want to cooperate with him in every way that we possibly can. We want to help.

I have raised stock in Minnesota for 37 years, and in Wisconsin for 15 years, so that I know something of the feeling over these questions. We have been there trying to protect our people, and we have protected them. We have received their indorsement from all sides and in all ways, so that we feel justified in saying that we have done our work and done it properly.

Mr. TINCHER. I am afraid a little misunderstanding occurred here yesterday in the criticism of this law. Your regulatory law up there, your law giving you authority to regulate the stockyards, does not provide that you shall do this or do that or do the other, but gives you general supervision the same as the Federal law?

Mr. WELLS. No; there are four or five different acts, and they specify the different things that shall be done.

Mr. TINCHER. But your law does not specify that you shall put a humane agent in there.

Mr. WELLS. Oh, no.

Mr. TINCHER. And your law does not specify that you shall keep a weigher at each scale?

Mr. WELLS. Yes; it does.

Mr. TINCHER. No; your law gives you jurisdiction over the weighing. It just authorizes you to take charge of the weighers.

Mr. WELLS. No. It says that they shall appoint weighers, who shall be required to give bond under the law.

Mr. TINCHER. And you have one weigher for each scale?

Mr. WELLS. Yes.

Mr. TINCHER. Well, you turn the control of the operation over to a certain bureau?

Mr. WELLS. The word "supervision" is a pretty broad term, or is it a narrow term, just as you want to take it.

Mr. TINCHER. It depends a good deal on the officer that is in charge?

Mr. WELLS. Yes. Our people feel this way. They were all friendly to this act, but the point is this, that the first order that comes out is that the stockyards shall do the weighing—the actual manual weighing. Now, the stockyards company is owned by Swift & Co., so that by that order they have said to the farmers of the Northwest, "You may raise the stock and put them on the railroad train, and when they get to the stockyards we are going to let the man that buys them weigh them." They object to that.

Mr. TINCHER. Well, stockyards are doing the weighing everywhere else in the United States except there.

Mr. WELLS. I understand, and we are just that much ahead of the other States, and we do not feel like being pulled back.

Mr. TINCHER. But suppose the Supreme Court should hold that your law was invalid?

Mr. WELLS. Well, we are law-abiding citizens.

Mr. TINCHER. But here is the proposition, now. I do not think you want to do anything, and I do not think you ought to do anything, that would hinder the proper administration of this law. If it is found, after the Secretary of Agriculture tries to administer this law and falls down in any way in administering it, that it needs an amendment, I promise you I will be one of the first men in this Congress, if I happen to be here, to help give you that amendment. But I do think we ought to be very slow about amending it before we try it out in such a way—I would hesitate a good while in deciding whether I wanted the stockyards company, without supervision, to weigh my stock or whether I wanted some State agency in the State of Illinois to have charge.

Mr. WELLS. Right there, on that weighing proposition. We have a condition there that perhaps does not exist at any other yard. We have made ground there, made out of refuse, and so forth, and filled in and covered with sand. These scales stand on that foundation. Every spring and fall the frost causes the ground to heave and move them around, and three sections of a scale may be weighing absolutely right and the other section absolutely wrong.

Then we have rats that come in there and undermine the scales. Your scale beam stands there perfectly balanced, and all at once it goes up. What does that mean? It means that there is a rat there in that scale. It may make 200 pounds difference in that man's draft. We have to watch that.

Every weigher in our department that makes a mistake on a draft must pay it out of his own salary. Whenever there is any question in his mind about the weight he gets those cattle back off the scale at once and verifies his weight to see if it is correct. Or if they have got a little too far away from him, he sees that they go to the next scale and are weighed there, because he knows he is responsible for it.

We had one case where a man made a little error of 1,000 pounds, because the type-registering beam did not register correctly; that is, it registered but did not punch it plainly. He took his pencil to fix it, but instead of 2,000 he made it 1,000. It cost him $42. Now he is very careful about making those mistakes.

And another thing about your stockyards weighers, while they are engaged in weighing the stock until 5 o'clock in the afternoon, then after that time one of them is looking for a job around in the yards for extra time, extra pay. And I have the affidavits of seven weighers that weighed for the stockyards company in my office, and every one of them says that he will give the benefit of the notch on the scale to the packers.

The CHAIRMAN. How much would that amount to?

Mr. WELLS. It would amount to, on the old beams, 10 pounds. Well, now, 10 pounds is not very much at the present time, but there was a time when it made a good deal more difference.

The CHAIRMAN. Well, it would be somewhere between nothing and 10 pounds.

Mr. WELLS. Yes. It doesn't mean so very much now, but when pork was up around 20 cents and over a pound, then it would mean something.

Mr. TINCHER. Now, how would you work that; how would you remedy it? You mean that when they can not get the accurate weight they give the advantage to the buyer?

Mr. WELLS. Yes.

Mr. TINCHER. Now, how would you remedy that condition? Would you give the advantage in one case to the buyer, and in the next to the seller?

Mr. WELLS. We compel them to put 5-pound brakes on the scale, and on some of them 1-pound brakes, so as to remedy that. I have seen them throw lamb after lamb on those scales, 60,000-pound capacity, great, massive cement foundation, and all that, and expect a little lamb to set in motion all that great weight there in order to correctly register the correct weight of that animal. I sent to the State weights and measures department; I sent to the expert for the Fairbanks-Morse people, who put in the scale, and they came there and stood there and watched it, and Fairbanks-Morse's man said, "I would never have believed it in the world if I had not stood and seen it with my own eyes, that they would attempt to weigh a small animal like that on that great scale; that was not built for that purpose at all."

Mr. TINCHER. What advantage do you figure that you would get by having a State hog shrinker?

Mr. WELLS. Well, that is put in by the shippers themselves. That is to protect. Now, I will tell you how that works out. That was put in there for a purpose. In the old days the packers bought their hogs. Now, supposing your hogs went down 10 cents after you bought your string—for instance, three or four carloads. Now, you immediately commenced to shrink those heavy. Well, the owner of the stock comes along and says, "That is unfair." "Well, if you don't want to take it, take them back." Well, now, if he takes them back he has got to sell them at 10 cents lower a hundred, doesn't he? Now, the result is that the shippers themselves got together and said, "We will put our own weigher here, and we will create an arbitration board and fight it out," which they did.

Mr. TINCHER. What do you mean by a hog shrinker?

Mr. WELLS. A hog shrinker is this: Here is a carload of hogs comes off the scale. Now, in that is barrows, boars, piggy sows, etc., and it is their duty to pick out the animals that should be shrunk, under the rule of 70 pounds for boars and 30 pounds for piggy sows. Now, the packers want to shrink everything. Naturally you can not blame them any.

Mr. TINCHER. Well, do you have a hog shrinker except when there is a controversy? Does he only go around then?

Mr. WELLS. There are hog shrinkers in the pen all the time.

Mr. TINCHER. With every sale, do you mean?

Mr. WELLS. With every sale. He is there all day long.

Mr. TINCHER. I understand he is in the yards all day long.

Mr. WELLS. He is in that pen all day long.

Mr. TINCHER. A hog shrinker at each scale?

Mr. WELLS. Yes, sir. We have got four hog shrinkers.

Mr. TINCHER. Of course, under the old system we have got to depend on our commission men to fight it out with the packers.

Mr. WELLS. Well, the commission men themselves, before the State came in at all, found it necessary to put in these hog shrinkers to protect their shippers, and they did put them in, and then we came in afterwards and they asked us to take them in under the State which we did. And most of the hog shrinkers that are there to-day

are men that were there before we came there, men that have been in the business, some of them, for 25 years.

The CHAIRMAN. Do you grade the hogs? I mean outside of the shrinkage, do you grade them?

Mr. WELLS. No; it is the commission man's duty to grade his hogs. He may want to sell a string, or he may want to cut out his lights, or whichever way the market will bring the best price.

The CHAIRMAN. Now, Mr. Wells, your State has been doing excellent work; no question about that. You are entitled to a great deal of credit. Now, can we not expect that the Department of Agriculture will undertake to carry on the good work that you have started, and continue it?

Mr. WELLS. The only difficulty that I see, Mr. Chairman, is this, that the department has not funds enough.

The CHAIRMAN. Has not what?

Mr. WELLS. Has not funds enough to come in there and function properly. I think you would agree with me if you were there day in and day out. A good many things come up there. You have commission men, you have traders, you have cappers, and speculators; you have got to keep track of those fellows. You may have to check up this transaction and that transaction and run it through the commission house.

The CHAIRMAN. How many people have you now working in the stockyards from the Federal Government, the Department of Agriculture?

Mr. WELLS. They have one cooperating with the State, in the Bureau of Markets, I believe.

The CHAIRMAN. You have people from the Bureau of Markets, you have them from the Bureau of Animal Industry, and from the various bureaus in the department.

Mr. WELLS. Well, but the Bureau of Animal Industry has its hands full looking after "subject" animals, and looking after the inspection in the packing plants. They would not have a minute's time for anything else. Their duties take up every minute of their time. And by the way, they are doing splendid work there, there is no question about that.

The CHAIRMAN. One reason why the Secretary of Agriculture was given exclusive jurisdiction over this matter was because he had a number of people in the stockyards; the purpose was to utilize their services. Now, of course, if that is not to be done there is no advantage in turning it over to the Secretary of Agriculture. But it was done for that purpose, and of course if that could not be carried out it may be necessary to amend the law, but it has been in operation only a few months, and I take it no definite plans have been worked out.

Mr. WELLS. Suppose that the department would say to us, "We will come on and do that weighing, and we will license your men; we will have absolute supervision over them"—no question about that.

The CHAIRMAN. Well, now, how much expense should there be? I am not familiar with the number of people employed in your stockyards, but I know there are dozens of them in Chicago; I know they pay large rent, and they have got men scattered all over. Now, it is the purpose to utilize the services of those people, and if that is not done there is no saving.

Mr. WELLS. I will tell you what it costs. It has been stated that it costs us $1.09, but it costs us 84 cents plus a car, say 85 cents, for all the activities in the yard, and also all through the State.

The CHAIRMAN. I mean if there is satisfactory service they should accept it. There should be cooperation. That is what the law provides.

Mr. WELLS. That is what we ask.

The CHAIRMAN. If there is not going to be cooperation, when we find out that there is not going to be, we may have to amend the law.

Mr. WELLS. The honorable Secretary told quite a number of your Members of Congress and your Senators, and I happened to be present when he did so, that he wanted to cooperate in every possible way.

The CHAIRMAN. Mr. Morrill is coming on the stand, and it will be your pleasure and your duty to cross-examine him, so that we will know exactly what he is going to do. We will then know whether we are going to have cooperation or not, and if there is not any possibility of cooperation, then your suggestion will have careful consideration, but I am glad that this thing has come up so that we may know exactly what we may expect. There have been a number of suggestions about this law and certain amendments have been suggested. You have suggested changes if carried out there is a possibility of loading this thing up with large expenses and making it very expensive. It was not intended that it should be, and I do not think it is necessary. Of course, if they are going to weigh all the live stock that comes through, at millions

of dollars of expense, that is a different thing; that is not what the Congress had in mind.

Mr. WELLS. But the shippers object to the order that has gone out that the packing company must weigh the stock and not let the farmer or anybody have anything to do about it.

The CHAIRMAN. Well, follow that up throughout the country. The country buyer weighs the stock; somebody has to weigh it. You can not have a weigher at every scale. As a matter of absolute safeguard you might insist on having a State weigher at every country scale, but that would be very expensive. Now, according to your own statement we have been doing very excellent work; we have protected the interests of the shippers. And we want to do that as far as it is possible to do so. But we have got to consider the cost. Uncle Sam can not take over every activity suggested.

Mr. WELLS. As I say, it is not for me to say what Congress shall do or shall not do. That, gentlemen, you have done, and the Congress has sustained you, and all that. All I want to say is that we want to cooperate with you in every way possible that the Secretary of Agriculture may see fit.

The CHAIRMAN. Well, you are interested in this weighing. You are interested in seeing that the best interests of the shippers are protected, and that everybody is given a fair deal.

Mr. WELLS. Yes.

The CHAIRMAN. You should have credit for that. But the question is: Can it be done just as well by the Federal Government?

Mr. WELLS. Well, that is a question for you gentlemen to determine, not for me.

The CHAIRMAN. Well, if you have the complete cooperation that is contemplated in the bill, wouldn't you acomplish the same thing?

Mr. WELLS. No; I do not think so.

The CHAIRMAN. Couldn't you do it by cooperation as well?

Mr. WELLS. My point is this: I do not believe that a supervisor can take care of all this business.

The CHAIRMAN. If one can not do it, can more than one? We have got them by the thousands scattered all over the country. We have 16,000 people in the Department of Agriculture.

Mr. WELLS. Yes. Well, I thank you gentlemen very much.

Mr. JONES. Just a moment. I would like to ask you if you have had any complaints from the shippers themselves about this charge of 1 cent plus?

Mr. WELLS. We have never received a complaint from a single shipper to that market in regard to the weighing charge.

Mr. JONES. Well, now, you say that the Federal Government can not take care of that because of the lack of funds. If the Federal Government made the charge they would have the same funds that you people have with reference to that, wouldn't they?

Mr. WELLS. Well, they would have exactly the same funds; yes.

Mr. JONES. Well, now, as I understand it, you claim that this charge you make takes care of all this expense?

Mr. WELLS. Yes.

Mr. JONES. And ultimately the shipper has to pay it anyway, no matter how it comes about?

Mr. WELLS. Yes.

Mr. JONES. So it is just as cheap, as a matter of fact, to have a disinterested man do the weighing as the stockyards?

Mr. WELLS. Certainly.

Mr. JONES. And that has been your experience and relationship with the stockyards—they have recognized the fact that you people do the weighing just as cheaply as they do themselves?

Mr. WELLS. Now in fixing the prices of feed, hay, grain, etc., they take into consideration all the overhead expenses, etc., and this letter that I quote to you is a letter from the president of the stockyards company saying that the cost of the weighing for the year previous had been so much to the company, and he expected us to take that into consideration in fixing the feed charges. So those things all come in there, and the feed charges were adjusted on the basis that our charges are absorbed if they had followed our orders.

Mr. ASWELL. Would you be willing for the Federal Government to make the charges and do the weighing?

Mr. WELLS. And do the weighing? Why certainly, if there are disinterested men there, and men there that are absolutely right. That is all the people up there want, is something that is right. And as far as the laws of the State are concerned, I have no

authority to speak for them whatever. I am simply speaking my own personal opinion.

The CHAIRMAN. Well, the people of Iowa are just as much interested in a square deal as you people are.

Mr. WELLS. Yes.

The CHAIRMAN. We are all interested in it.

Mr. WELLS. Yes; and we are just as much interested in seeing that your feeder buyers that come up there to buy cattle are protected. Now we stopped a practice that had been going on, a bad practice. We had four men removed from the yards that were getting a per hundred charge as go-betweens, between your buyers and the shippers. Your buyers would come on to our market, and these steerers, as we call them, would steer your buyers to one man, and they would soak them there good and plenty, and would get 10 cents a hundred out of that, and then they would try and get as much as they could from the shippers on the other hand. I will say for your benefit that one of those men is sitting on the fence there now, and has been since the 1st of January.

Mr. ASWELL. What do you mean by "sitting on the fence"?

Mr. WELLS. He is active there now. He went back on the 1st of January and went to work under the permission of the stockyards company.

Mr. ASWELL. Have you not charge of that?

Mr. WELLS. No; we have not attempted any supervision as far as that is concerned. We just simply attend to the individual weighing and the individual complaints.

The CHAIRMAN. Is that all, Mr. Wells?

Mr. WELLS. I would like to ask leave, Mr. Chairman, to place in the record our laws relating to the railroad and warehouse commission, including general provisions governing railroads and common carriers, enacted during special legislative session, September, 1919, and laws relating to the railroad and warehouse commission enacted at the legislative session of 1921.

The CHAIRMAN. Is there any objection? Without objection it will be so ordered.

(The laws referred to, presented by Mr. Wells, are here printed in the record in full, as follows:)

LAWS RELATING TO THE RAILROAD AND WAREHOUSE COMMISSION OF MINNESOTA, INCLUDING GENERAL PROVISIONS GOVERNING RAILROADS AND COMMON CARRIERS, ENACTED DURING SPECIAL LEGISLATIVE SESSION, SEPTEMBER, 1919.

[Chapter 43—H. F. No. 57.]

AN ACT Appropriating money for the purpose of defraying the expense of the railroad and warehouse commission in supervising the business of public stockyards.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. *Appropriation for salaries and expenses in supervision of public stockyards.*—There is hereby appropriated from the general revenue fund not otherwise appropriated the sum of $10,000, to be available upon the passage of this act, and the further sum of $10,000, to be available at the beginning of the next fiscal year, for the payment of salaries and expenses in the supervision of the public stockyards by the railroad and warehouse commission.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved September 22, 1919.

[Chapter 33—H. F. No. 27.]

AN ACT Prescribing penalties for failure, on the part of companies operating a railroad, to equip and use on each locomotive engine a practical and efficient ashpan and spark-arresting device, and providing for the collection of such penalties.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. *Spark-arresting devices for locomotives.*—Every company operating a railroad, provided this act shall not apply to any company, individual, or partnership operating a railroad or locomotive solely and wholly for the purpose of repairing or construction of railways, bridges, or highways, for any purpose in this State which shall fail to equip and use upon each locomotive engine a practical and efficient ashpan and spark-arresting device shall be liable to a penalty of $500 per day for each and every day on which such defective locomotive is run within the State. Upon duly verified information being lodged with him, the attorney general shall, if such information discloses that a violation has occurred, bring suit or suits in the district courts of

Hennepin or Ramsey Counties for the recovery of such penalties, which, when so collected, shall be credited to the general revenue fund of the State.

SEC. 2. *Construction.*—This act is not intended as a repeal, modification, or amendment of any existing law, but is supplemental thereto.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved September 22, 1919.

[Chapter 39—H. F. No. 53.]

AN ACT To provide for licensing by the railroad and warehouse commission of all commission merchants, brokers, factors, or agents engaged in handling, buying, selling, or soliciting consignments of live stock at any public stockyards, and to fix the commission that may be charged by them, providing rules and regulations and providing penalties.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. *Defined—License—Bond.*—All commission merchants, brokers, or agents, or any person whomsoever engaged in soliciting consignments of live stock to be handled for the account of the shipper handling, buying, or selling any live stock at any public stockyards, shall be known as "live-stock commission merchants," and as such shall be required to first procure a license from the railroad and warehouse commission, hereinafter designated as the commission, and furnish a bond to the State of Minnesota for not more than the sum of $20,000, which bond shall be a continuous surety bond to be made in such form as the commission may prescribe. The railroad and warehouse commission may prescribe as bond for such an amount for dealers as will in its opinion be sufficient for the protection of persons doing business with any dealer, taking into consideration the volume of business done by such dealer.

For the purpose of this subdivision the term "live stock" shall include cattle, sheep, hogs, horses, and mules. Nothing in this act shall apply to any person, firm, copartnership, association, or corporation who shall sell their own consignment of live stock or to any person, firm, copartnership, association, or corporation who shall buy live stock for their own use or for the purpose of feeding.

SEC. 2. *Application for license—Revocation of license.*—On or before the 1st of December in each year the persons specified in section 1 of this act shall make an application to the commission in writing for a license to conduct the business of a live-stock commission merchant. This application shall set forth the name of the individual, firm, or corporation and each member of the firm or officer of the corporation, the point or points at which the applicant intends to do business, post-office address, and the location of the general office of such applicant. A separate bond and license shall be required for each point at which such applicant intends to do business.

On or before the 1st of January each year the commission shall furnish such applicant with a license good for one year, such license to be posted in a conspicuous place in the office of the licensee. The fee for each license must accompany the application for license, and shall be $25. All moneys so collected shall be deposited in the State treasury and known as the live-stock commission fund," and paid out only on order of the commission and the auditor's warrant. The interest received from deposit of said moneys shall be credited on the first of each month to such fund, and notice of the amount of such interest shall be sent to the commission.

Such license may be revoked by the commission for cause upon notice and hearing.

SEC. 3. *Schedule of charges.*—The commission shall establish a schedule of reasonable charges, rules, and regulations that may be made by any licensed live-stock commission merchant at any public stockyard for the buying or selling of any live stock and may change said schedule whenever they deem it necessary. Any licensee charging any amount in excess of the fixed charge in said schedule may have his or their license revoked by the commission after a hearing: *Provided, however,* That any interested person being aggrieved by the action of the commission may appeal to the district court of the county of his residence, or the county in which the transaction involved took place, within 30 days from notice to him by said commission of their decision.

Said appeal may be perfected by notice thereof served on said commission or any member thereof, and the determination of said court when certified to said commission shall be carried out and performed by the commission.

SEC. 4. *Statement to shipper.*—Whenever a licensee sells any live stock he shall render a true statement in writing to the consignor within 24 hours of the number of animals sold, weight, price received, name and address of purchaser and the day of sale.

SEC. 5. *Complaint may be filed.*—Whenever a consignor of live stock, after demand therefor, shall have received no remittance or reports of its sale, or shall be dissatisfied with the remittance or report, he may file a complaint in writing, under oath, to the

commission, who shall investigate the matter complained of. In making the investigation the commission may compel the licensee to produce all information, books, records, and memoranda concerning the matter, and they shall give the complainant a written report of the investigation. This report shall be prima facie evidence of the matters therein contained.

SEC. 6. *Statement filed.*—It shall be the duty of every licensed commission merchant to make and file with the State supervisor of stockyards on or before the 10th day of each month a statement showing the total amount of hay or other feed delivered by them to shippers and the amount charged for same during the preceding month. Such report shall be verified and in such form as the commission may prescribe.

SEC. 7. *Failure to account.*—If any licensee shall fail to account for any consignment of live stock, the consignor, or his agent may file with the commission an affidavit setting forth the matters complained of. Thereafter, such consignor may bring an action upon the bond of the licensee, and recover the amount due him on account of such consignment. If such licensee has become liable to more than one consignor, and the amount of his bond be insufficient to pay the entire liability, the consignors shall be compensated in proportion to their several claims.

SEC. 8. *Penalty for failure to comply with the provisions of this act.*—Any person, persons, firm, or corporation engaged in selling any live stock as herein specified, who fails or neglects to comply with any of the provisions of this act, or any of the rules and regulations of the commission therein provided for, shall be guilty of a misdemeanor, and upon conviction thereof in any court having competent jurisdiction shall be punished by a fine or imprisonment. The railroad and warehouse commission is hereby authorized, either upon such conviction or upon its own findings after investigation, if the facts warrant it, to cancel the license of any person, persons, firms, or corporation guilty of any violation of law, or conduct prejudicial to the interest of those making consignments for sale. Where a license has been canceled and the order of the commission canceling the same is sustained by the court in case of appeal, the railroad and warehouse commission may refuse to issue any license to such person, persons, firm, or corporation for a term of one year.

SEC. 9. *Investigation upon request—Penalty for failure to produce books, etc.*—Whenever requested to do so by an interested shipper, the railroad and warehouse commission shall have power to investigate any sale or transaction carried on by any person, persons, firm, or corporation licensed under this act, and for that purpose shall have the right to examine any and all books, records, and accounts of any licensed commission merchant. Any licensed commission merchant or any agent in charge of such books, records, or accounts who shall fail or refuse to submit such books, records, or accounts for the examination of said railroad and warehouse commission shall be guilty of a midemeanor.

SEC. 10. *Unlawful representations.*—It shall be unlawful to use the words "agent," "factor," "broker," "commission merchant," or "commission company" on any advertising matter, letter, or bill heads of any person not having a license from the commission. Any person, firm, or corporation who shall hold themselves out or claim to be licensed and bonded commission merchants, either by written, printed, or verbal representation, or by the use of any letterhead, statement, or advertisement, without having a license from the commission shall be guilty of a misdemeanor.

SEC. 11. This act shall take effect and be in force from and after the 1st day of January, 1920.

Approved September 22, 1919.

[Chapter 40—H. F .No. 54.]

AN ACT To provide for the weighing of live stock at public stockyards under the jurisdiction of the railroad and warehouse commission.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. *Appointment of weighers—Bond.*—The railroad and warehouse commission shall appoint at public stockyards such weighers as may be necessary for the purpose of weighing live stock. Every such weigher shall give to the State a bond in the sum of $5,000 conditioned for the faithful discharge of his duty.

SEC. 2. *Reports—Certificates.*—Such weighers shall report daily to the supervisor of stockyards all weights taken by them in such form as he may prescribe. The supervisor of stockyards shall furnish to interested parties a certificate setting forth the number of animals weighed, for whose account weighed, and the actual weight of such animal or animals. Such certificate shall be prima facie evidence of the facts therein certified.

SEC. 3. *Fees—Where deposited.*—The commission shall prescribe the fee necessary to cover the cost of such weighing to be assessed and collected in such a manner as the commission may prescribe. All moneys so collected shall be deposited in the State treasury and known as the "live stock weighing fund," and paid out only on order of the commission and the auditor's warrant. The interest received from such deposits of said moneys shall be credited on the first of each month to such fund, and notice of the amount of such interest shall be sent to the commission.

SEC. 4. *Weighers' qualifications.*—No such weigher shall during his term of service be in any manner interested in the handling, shipping, purchasing, or selling of live stock, nor in the employment of any person or corporation engaged therein, nor shall he be a member of any live-stock exchange or organization of like character.

SEC. 5. *Bonds filed.*—All bonds required by this act shall be filed with the secretary of state, and suit may be brought thereon by any person injured by the misconduct of the principal.

SEC. 6. *Appointment may be revoked.*—Upon written complaint filed with the commission, charging any such weigher with official misconduct, inefficiency, incompetency, or neglect of duty, the commission shall investigate such charges, and if it be sustained, shall remove such officer.

SEC. 7. *Penalty.*—Any person not duly appointed and qualified, who shall assume to act as such weigher, shall be guilty of misdemeanor and be punished by a fine of not less than $50 nor more than $100.

SEC. 8. *False weights or certificates—Penalties.*—Any weigher who shall knowingly or carelessly weigh any live stock improperly, or give any false certificates of weight, or accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty, or who shall be guilty of any neglect of duty, and any person who shall improperly influence, or attempt to influence, any such officer in the performance of his official duty, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than $100 nor more than $1,000, or imprisonment in the county jail for not less than 30 days nor more than one year, or by both such fine and imprisonment.

SEC. 9. *Terms prohibited.*—Any person who is not connected with the State weighing department is hereby prohibited from using the term "supervisor of weights" or "State weigher," any representation of the seal of the State, or any other words or device calculated or tending to indicate that the certificate or receipt is issued under State authority, or to otherwise deceive or mislead the public or any person interested, when issuing certificates or receipts purporting to show the wieght of live stock.

Any person found guilty of violating any of the provisions of this section shall be guilty of a misdemeanor.

SEC. 10. *Interference with supervisor or weigher.*—Any person or corporation who shall obstruct any State supervisor or weigher in the performance of his official duties by preventing his proper access to the scales used in the weighing of live stock or otherwise, shall forfeit to the State $100 for each offense.

SEC. 11. This act shall take effect and be in force from and after January 1, 1920.

Approved September 22, 1919.

[Chapter 41—H. F. No. 55.]

AN ACT Empowering the railroad and warehouse commission to make a physical valuation of the property of public stockyards, and appropriating moneys therefor.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. *Valuation of public stockyards.*—The railroad and warehouse commission, hereinafter designated the commission, shall whenever it deems the same necessary for the purpose of establishing and fixing a reasonable schedule of charges and prices for driving, watering, feeding, yarding, weighing, and caring for stock and for every kind of service performed by any public stockyards, pursuant to chapter 461, General Laws, 1919, determine the value of all the property of any public stockyards devoted to public use, and shall, after notice to the companies operating such public stockyards, hold such public hearings as will give all interested parties a chance to furnish evidence and he heard. For the purpose of this act the commission is authorized to appoint engineers, examiners, experts, clerks, accountants, and other assistants as it may deem necessary, at such rates of compensation as it may prescribe.

In the discharge of their duties such appointees shall have every power of any inquisitorial nature granted in this act to the commission. The commission may conduct any number of investigations contemplated through its individual mem-

bers or appointees, and may delegate to its individual members the taking of all testimony on any investigation or hearing.

SEC. 2. *Statement to be filed.*—It shall be the duty of the commission at all times to keep up the physical valuation of the property of public stockyards and for this purpose may require a detailed statement showing the changes in the physical conditions of the properties of any stockyards company. Such statement shall be filed each year at such time as the commission may direct, and shall be verified by the president, chief engineer, or the proper accounting officer of such stockyards company.

SEC. 3. *Appropriation.*—For the purpose of making the valuation herein provided, there is appropriated out of the general revenue fund not otherwise appropriated the sum of $10,000, to be available January 1, 1920.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved September 22, 1919.

[Chapter 461—H. F. No. 933.]

AN ACT Defining and regulating public stockyards, placing them under the supervision and control of the railroad and warehouse commission, and providing penalties.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. "Public stockyards" as used herein means all stockyards into which live stock is received for the purpose of exposing the same for sale or for feeding the same and doing business for compensation. "Person" as used herein includes any person, copartnership, association, or corporation doing business in this State. "Operator" as used herein means any person owning or operating a public stockyards in this State. "Commission" as used herein means the railroad and warehouse commission. In construing this act gender and number may be disregarded.

SEC. 2. The railroad and warehouse commission is hereby vested with the same jurisdiction and supervisory power over public stockyards doing business in this State as it now has over railroad companies.

SEC. 3. Every public stockyard operator shall annually, on the 31st day of December, file with the commission, on a form prepared by it, a statement certified and sworn to, stating the number of head of cattle, calves, hogs, sheep, horses, and mules received in such stockyards during the preceding year and such other facts as the commission may require.

SEC. 4. It shall be the duty of every public stockyard operator to furnish reasonable, adequate service and facilities for the accommodation of the public, and the rates, charges and prices of such stockyards for the services performed by it shall be fair and reasonable. All unreasonable and excessive rates, charges, and prices are hereby declared unlawful.

SEC. 5. Within 60 days after the taking effect of this act it shall be the duty of every public stockyard operator to forthwith file with the commission a schedule of its rates, charges, and prices for driving, watering, feeding, yarding, weighing, and caring for stock and for every kind of service performed by it, together with all rules and regulations used in the conduct of the business of public stockyards, all of which shall be kept on file by the commission and shall be open to public inspection. The commission may require each such operator to post for public inspection at designated places so much of said schedule and regulations as it deems necessary for the information of the public.

SEC. 6. Whenever such rates, schedules, or regulations are found to be unreasonable by the commission, said commission shall, upon its own motion, or upon complaint, prescribe reasonable rates, charges, and regulations to supersede those found unreasonable, and such new rates, charges, or regulations shall be filed in place of those superseded. No charges, rates, or regulations filed with the commission shall be changed by any such operator without an order of the commission sanctioning the same. Proceedings before the commission shall be commenced and conducted in the same manner that proceedings affecting railroads are now commenced and conducted and appeals from orders of the commission may be taken in the same manner and to the same extent as appeals may be taken from orders of the commission affecting railroads.

SEC. 7. Whenever, in the judgment of the commission, any public stockyard fails in any respect to comply with the law, or any repairs or improvements are necessary, or reasonable addition to or change of its stockyard facilities, or any change in the mode of operating such stockyards or conducting its business will promote the security or convenience of the public, said commission, by a written order to be served as a summons in a civil action, shall require compliance with such law or the making of

such repairs, additions, or change. In case of disobedience to said order said commission may cause an action to be commenced for the enforcement thereof.

SEC. 8. Said commission is hereby authorized and empowered to adopt and enforce reasonable rules and regulations governing the sanitary conditions in such public stockyards, the care of the animals therein, the receiving and shipping of the same, and the general service performed by such stockyards.

SEC. 9. It shall be unlawful for any public stockyards operator to sell and deliver at the rate of less than 2,000 pounds for a ton of hay or any part thereof or to sell and deliver less than 70 pounds of corn in the ear for a bushel or less than 56 pounds of shelled corn for a bushel.

SEC. 10. It shall be unlawful for any public stockyards operator or any agent or employee to prohibit or prevent the owner or his representative of any dead stock in such yard from selling or otherwise disposing of such stock.

SEC. 11. Any persons violating the provisions of this act shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished accordingly.

SEC. 12. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 13. This act shall take effect and be in force from and after its passage.

Approved April 25, 1919.

LAWS RELATING TO THE RAILROAD AND WAREHOUSE COMMISSION ENACTED AT THE LEGISLATIVE SESSION OF 1921.

[Chapter 9—H. F. No. 195.]

AN ACT To provide for licensing by the railroad and warehouse commission of all persons commonly known as dealers, speculators, traders, or scalpers, other than live-stock commission merchants, engaged in the business of buying and selling live stock at any public stockyards; to provide rules and regulations and penalties for violations.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. *Live-stock dealers licensed.*—All persons, other than live-stock commission merchants, commonly known as dealers, speculators, traders, or scalpers, engaged in the business of buying and selling live stock at any public stockyards, shall for the purpose of this act be known as "live-stock dealers." Every such live-stock dealer before engaging in such business shall first procure a license from the railroad and warehouse commission, hereinafter called the commission, and shall file with the commission, and acceptable to the commission, a surety bond to the State of Minnesota in the sum of $1,000. Such bonds shall be continuous surety bonds and be conditioned for the faithful discharge of all duties—as a live-stock dealer operating under this act and full compliance with the law of the State and rules and regulations of the commission relative thereto. The said commission may provide rules and regulations relating to said live-stock dealers in the buying and selling of live stock at such public stockyards.

SEC. 2. *Application, fee, term.*—Licenses shall only be issued upon written application, which shall state the name of the individual, firm, or corporation, and each member of the firm or officer of the corporation, the point or points at which the applicant intends to do business, post-office address, and the location of the general office of such applicant. All licenses shall expire upon the 31st day of December following the date of issuance. Such license shall be posted in a conspicuous place in the office of the licensee. The fee for each license must accompany the application and shall be $10. All license fees shall be deposited in the State treasury, to be credited to the "live-stock weighing fund," and paid out only on order of the commission and the auditor's warrant. The interest received from deposits of said moneys shall be credited on the first of each month to such fund and notice of the amount of such interest shall be sent to the commission.

SEC. 3. *Violations—Penalties.*—Any person, persons, firm, or corporation engaged in the business of buying and selling any live stock as such dealer who fails or neglects to comply with any of the provisions of this act or any of the rules and regulations of the commission therein provided for shall be guilty of a misdemeanor, and upon conviction thereof in any court having competent jurisdiction shall be punished by a fine or imprisonment. The commission is hereby authorized either upon such conviction or upon its own findings, after investigation and hearing, if the facts warrant it, to cancel the license of any person, persons, firm, or corporation guilty of any violation of law, subject to the right of the licensee to appeal from such order to the court. Where a license has been canceled and the order of the commission cancel-

ing the same is sustained by the court, in case of appeal the commission may refuse to issue any license to such person, persons, firm, or corporation for the term of one year.

SEC. 4. *Railroad and warehouse commission shall examine books.*—The commission shall have the right to examine any and all books, records, and accounts of any live-stock dealer. Any live-stock dealer, and any agent or employee in charge of such books, records, or accounts, who shall fail or refuse to submit such books, records, or accounts for the examination of said railroad and warehouse commission shall be guilty of a misdemeanor.

SEC. 5. *Exemptions.*—The term "live stock" shall include cattle, sheep, hogs, horses, and mules. Nothing in this act shall apply to any person, persons, firm, copartnership, association, or corporation who ship their own consignment of live stock, or who shall buy live stock for their own use or for the purpose of feeding.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved January 28, 1921.

[Chapter 307—H. F. No. 573.]

AN ACT Authorizing the Railroad and Warehouse Commission of the State of Minnesota to regulate the distribution of railroad cars during times of shortage.

Be it enacted by the Legislature of the State of Minnesota:

SECTION. 1. The Railroad and Warehouse Commission of the State of Minnesota is hereby given full power and authority, and it is hereby made its duty, after having given reasonable notice and upon hearing being had, to make, publish, and enforce from time to time such reasonable and just rules and regulations for the distribution of cars at stations for the transportation of live stock, grain, and other farm products, among the shippers, whether located upon a certain railroad line or lines, or customarily dependent upon such railroad line for their car supply.

Sec. 2. During any period when the supply of cars available for such service does not meet the requirements of the shippers, it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such shippers to the extent that cars are available, and to count each and every car furnished to or used by such shippers against such shippers.

SEC 3. Failure or refusal to so do shall be unlawful, and in respect to each car not so counted shall be deemed a separate offense, and the carrier, receiver, or operating trustee so failing or refusing, upon conviction, shall be fined $100, for each offense; provided, however, that when necessity is found to exist, of which the commission is advised, either by its own investigation, which it may make at any time, or by hearing on complaint of any shipper, or railroad company, the commission may, by special order, require the railroad company on whose railroad such necessity is found to exist, to depart, to the extent provided in such order, from the application of this act or any rule or rules formulated and established under the same.

SEC 4. This act shall take effect and be in force from and after its pasage.

Approved April 15, 1921.

[Chapter 344—S. F. No. 291.]

An Act Relating to live stock exchanges and to the rules and regulations of such exchanges.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. Any rule, by-law, regulation, or requirement of a live stock exchange or association maintaining a place of business for its members where any live stock is bought, sold, or exchanged for themselves or for others, to the effect that no member thereof shall buy, sell, or exchange live stock with a person who is not a member thereof, is hereby declared to be contrary to public policy and is made null and void, and the dealing in live stock by a member of such an association with a non-member shall not work any penalty to such member, nor shall such dealing be cause for a cancellation or forfeiture of membership in such live stock exchange or association.

SEC. 2. Whenever any such live stock exchange or association, or any officer or agent thereof, shall violate any of the provisions of this act, the attorney general shall prosecute such organization, officer, or agent for such violation, and shall, by appropriate legal proceedings in the name of the State, ask the dissolution of such organization and prevent its further operation, and said attorney general shall also, by injunction or other appropriate legal remedy, restrain such organization and all

members thereof from thereafter continuing in such violations and from any further trading in such exchange or association either directly or indirectly.

SEC 3. This act shall take effect and be in force from and after its passage.

Approved April 18, 1921.

The CHAIRMAN. Did you have something else, Mr. Wells, that you wished incorporated in the record?

Mr. WELLS. Yes; I have some affidavits here that were filed in a case in St. Paul, showing why the State laws were passed and how they were working from the very beginning. I think it might add something of value to your record here if these affidavits were placed in the record.

The CHAIRMAN. Without objection they may be incorporated in the record.

(The affidavit of Mr. H. L. Halverson, the affidavit of James Cook, and an affidavit signed by 10 others, attached to the affidavit of James Cook, are here printed in the record in full, as follows:)

[District court.]

STATE OF MINNESOTA, *County of Dakota, ss:*

H. L. Halverson, being first sworn, deposes and says that he is a resident of Minnesota, and has been engaged in general farming in said State since boyhood, except during the past 13 years he has occupied the position of manager of a cooperative live-stock shipping association, and for the past five years as president of the Minnesota Central Cooperative Live-Stock Shipping Associations shipping stock to the St. Paul Union Stockyards at South St. Paul, Minn, the only public stockyard in said State.

The affiant further states that in the early history of Minnesota sales of live stock from the farms were made direct to local buyers of the same, until about 1889 a public stockyard was established at South St. Paul, Minn., but was not patronized to any great extent by the producers of live stock in this State.

In the early nineties farmers commenced to ship their stock to the public market at South St. Paul, and this condition continued until 1908, when the first farmers' cooperative live-stock shipping association was organized in Minnesota, and from that time on various localities organized cooperative shipping associations, and by 1917 it was estimated that the majority of the live stock arriving at the South St. Paul market from Minnesota points was handled by cooperative shippers' associations. There was a universal complaint among these shipping associations that conditions as to the handling of their live stock at the South St. Paul yards was detrimental to the shippers in many respects, and at the various meetings of these associations the matter was discussed how to remedy those conditions. It was finally decided to organize a State cooperative shipping association comprising all the local associations.

The State association of cooperative live-stock shippers, after going over the matter thoroughly, decided to appoint a committee to wait upon the State legislature in order to procure proper laws for the regulation of the public stock yards in the State of Minnesota. The Minnesota State legislature, at the request of the live-stock producers and shippers, enacted chapter 461, of the Laws of 1919, placing the supervision of the public stock yards of the State under the railroad and warehouse commission, and granting to them power to make such rules and regulations for the handling of public stock yards as they might deem fit. It was afterwards found that the law enacted, relating to the supervision of stock yards, did not give the railroad and warehouse commission power to place weighers at the scales in the yard to weigh the live stock sold on that market by the shippers as desired by them. Therefore, a committee representing the Minnesota Live Stock Shippers Association was appointed to wait upon the legislature in order to secure the passage of a law authorizing the railroad and warehouse commission to place disinterested and neutral persons to operate the scales in the publicstock yards of the State. The legislature enacted chapter 40 of the Laws of 1919, the terms of which required the railroad and warehouse commission to appoint suitable weighers to be stationed at the scales in the public stockyards of the State to perform the actual weighing of live stock passing over the scales, and giving the said commission full power to make such rules and regulations as they might see fit for the proper conduct of said weighers. Acting under the law, the railroad and warehouse commission appointed sufficient State weighers at such stockyards to weigh said stock, with authority to issue a State certificate showing the true and correct weight of each and every draft of stock taken over any of the scales in said yards.

This affiant, after consulting with a large number of the shippers of live stock handled by the Minnesota Cooperative Shipping Association, fully believes that the interest of the producer has been carefully protected by accurate and correct weights being taken over said scales since said law has been in operation, and the affiant is informed *and believes that it is* the intention of the Union Stock Yards Co. at South St. Paul *to take over and operate* said scales, independent from the railroad and warehouse *commission, and that it* is the intention of the said Union Stock Yards Co. to appo-

their own weighers to weigh the stock owned by the shippers, and to compel the weighers appointed by the State to desist from weighing the same or to interfere wit h the scales in any manner.

The affiant is further informed and believes that Swift & Co. and Armour & Co. are the principal owners of the stock of the St. Paul Union Stockyards Co., and further, that said companies buy at least 60 per cent of all the stock shipped to said terminal market for the purpose of slaughter. That said St. Paul Union Stock Yards Co. is virtually owned and controlled by said Swift & Co. and Armour & Co., and that the placing of weighers at the scales by the Union Stock Yards Co. is placing weighers that are in reality employees of the said packing companies.

Affiant further believes that if such action is taken the shipper of live stock is placed wholly at the mercy of the said packing companies and can not feel that he is receiving the protection now afforded under the laws of the State of Minnesota, and such action if taken, would be very detrimental to the live stock producers and shippers of Minnesota.

H. L. HALVERSON.

Subscribed and sworn to before me this 15th day of February, 1922.

[SEAL.] FRANK DEPURN,
Notary Public, Ramsey County.

My commission expires June 8, 1927.

STATE OF MINNESOTA,
County of Dakota, ss.

A. B. Amundson being first duly sworn says that he resides at Dawson, Minn.; that for many years he has been a producer and shipper of live stock to the St. Paul Union Stock Yards at South St. Paul, Minn., and that he has read the foregoing affidavit of H. L. Halverson and knows its contents; that the statements therein contained are true to the best of the affiant's knowledge and belief.

A. B. AMUNDSON.

Subscribed and sworn to before me this 15th day of February, 1922.

[SEAL.] FRANK DEPURN,
Notary Public, Ramsey County.

My commission expires June 8, 1922.

STATE OF MINNESOTA,
County of Wright, ss:

James Cook, of Clearwater, being first duly sworn, deposes and says that for many years he has been a shipper of live stock to the South St. Paul market, and fully acquainted with the conditions as to the weighing of live stock in the yards of the St. Paul Union Stockyards Co.

That prior to the passage of chapter 40, special session laws, 1919, commonly known as the "State live stock weighing law," there was great dissatisfaction among stock shippers with the weighing of live stock at the said South St. Paul yards, upon two grounds: First, it was felt that the scales were inaccurate; second, it was thought that the weighers were not impartial because they were employees of the Stockyards Company, and the stockyards were owned and controlled by the packers who purchased most of such live stock. And chapter 40, special session laws of 1919, was passed because of this dissatisfaction of live-stock shippers to said market.

Since the State law has been in operation and the weighing of said live stock being done by State weighers, affiant and other shippers of live stock generally have had the full consequence in the accuracy of the weights taken by the State weighmasters of the live stock passing over the scales.

Affiant further states that the fact that a weighing fee is being charged by the State, while no specific charge was made therefor by the stockyards, is of no consequence to the shippers who have to pay such charges, for the reason that the shippers of live stock to the market feel that the charge is reasonable, and they know that the stockyards company was charging for such weighing service indirectly and was paid for by the parties having live stock weighed.

Affiant fully believes that it would be to the best interests of all to have such weighing continued by the State, pursuant to the laws enacted in relation thereto.

JAMES COOK.

Subscribed and sworn to before me this 20th of February, 1922.

[SEAL.] A. M. WHITMORE,
Notary Public, Wright County, Minn.

My commission expires January 19, 1929.

We, the undersigned live-stock shippers to the St. Paul Union Stockyards, at South St. Paul, Minn., upon oath do say:

That we have read the foregoing affidavit and know the contents thereof, and that the same is true to the best of our information and belief.

R. W. Keeler, Chokio, Minn.; G. C. Paulson, Elbow Lake, Minn.; Chas. Wille, Hampton, Minn.; Lee Fredenck, Rockford, Minn.; Harry Molenaar, Renville, Minn.; J. B. Erickson, St. James, Minn.; W. N. Eliason, Cokato, Minn.; Robert Stewart, Redwood Falls, Minn.; A. B. Amundson, Dawson, Minn.; H. L. Halverson, Litchfield, Minn.

Subscribed and sworn to before me this 20th day of February, 1922.

[SEAL.] F. C. DEPIERRE,
Notary Public, Ramsey County.

My commission expires June 8, 1927.

The CHAIRMAN. I think all of us are heartily in accord with what you have done and if the other States had supervised, legislated, and done as well as you have done in regard to protection and regulation there would not have been so much need for this regulation, but we were not so fortunate as to have that in every State, and, therefore, it was necessary to have legislation.

Mr. TINCHER. That is an unfortunate statement to have in the record, because other States did legislate long before they did, and it was held to be unconstitutional, so the States could not go ahead and regulate. This matter had to be regulated by Federal control.

The CHAIRMAN. Nobody had legislated effectively.

Mr. TINCHER. Only one had legislated, and the Federal court had said that they could not legislate.

The CHAIRMAN. Yes; their power is limited, just the same as that of Congress. They could not go beyond that. There are, of course, certain things the States can do and certain things the Federal Government can do.

Is that all, Mr. Wells?

Mr. WELLS. Yes.

(Witness excused.)

The CHAIRMAN. Now, Mr. Morrill, we are ready to hear you.

STATEMENT OF CHESTER MORRILL, ASSISTANT TO THE SECRETARY, IN CHARGE OF PACKERS AND STOCKYARDS ADMINISTRATION, DEPARTMENT OF AGRICULTURE, WASHINGTON, D. C.

The CHAIRMAN. Mr. Morrill, I wish you would tell us something about this cooperation, and what it is possible to do under this law, and what can be done in the way of cooperation. If there is any way by which it can be brought about, it is desirable to do so.

Mr. MORRILL. In what I have to say I want to repeat what I said at St. Paul in the course of the hearing to which reference has been made, that it is not the purpose of the Department of Agriculture to criticise anything that the State has done in the past. This is a matter of looking forward to the proper administration of the packers and stockyards act, and I have not spent any time trying to find fault with the State supervision of the yards under their laws. They have certain mandatory laws—I think they say five—dealing with various phases of the operations of the yards, regulating practically everything that goes on in the yards. Not only providing for the the weighing of the live stock in the yards by the State weighers, but for the dockage and shrinkge by state employes, and for the supervision of the maintenance and operation of the yard in other respects, with reference to sanitary conditions, and other things of that kind.

The CHAIRMAN. Well, you now have the power to do the very thing the State has been doing, have you not?

Mr. MORRILL. The packers and stockyards act covers the field with reference to interstate commerce that the state laws have heretofore covered with respect to all commerce. And right there I want to point out that the Department of Agriculture does not take the position that the State is excluded from exercising its authority with respect to any commerce that may be intrastate and may be properly construed to be such.

The CHAIRMAN. Within this particular yard.

Mr. MORRILL. Yes, within this particular yard. So far as we are concerned, they can continue to maintain their supervisor and continue to maintain their inspector of scales, and their humane officer, and other people. and we would be very glad to have

them stay there and to observe conditions, and in so far as any valid State law is concerned, to enforce that law, and in so far as matters over which the Secretary of Agriculture has jurisdiction is concerned, to bring those matters to the attention of the Secretary of Agriculture for attention in accordance with the procedure prescribed by the law.

The CHAIRMAN. Your contention is that so far as any stock shipped from one point in the State to another point in the State is concerned, the State has jurisdiction over it within this particular yard.

Mr. MORRILL. Yes.

The CHAIRMAN. South St. Paul.

Mr. MORRILL. Yes, unless that particular stock should become a product which enters into interstate commerce in accordance with the definition of the term "commerce" in this law.

The CHAIRMAN. According to the definition of interstate commerce in this law there is not very much left, is there?

Mr. MORRILL. I readily concede that the definition of "commerce" is very broad, and I do not know just how far that definition does go. We have not had a practical application of the possibilities of that definition, and therefore I can only refer to the definition of the law. That is my sole guide.

The CHAIRMAN. The definition is very broad, the broadest definition ever given to interstate commerce, and I take it that very little if any is left—that practically all of it goes into interstate commerce.

Mr. MORRILL. Well, if there is nothing left, then I have no discretion in the matter.

The CHAIRMAN. Let us get this thing cleared up so we will know where we are at. Do you contend now that a carload of cattle shipped from a point in Minnesota to South St. Paul and sold in South St. Paul stockyards to a local packer is intrastate? Keeping in mind the fact that no packer sells everything at home, or within the State. Certain parts of that shipment are shipped outside, and certain parts are disposed of locally.

Mr. MORRILL. That is the reason I hesitate to answer your question, because it would necessitate a consideration of the facts in the case to determine whether it came within the definition of "commerce." I am aware, as you say, that the packer may use the animals for interstate shipments in the form of products.

The CHAIRMAN. It has been suggested that a shipment from one point in the State of Minnesota to the stockyards in St. Paul, and then sold to a farmer in Minnesota and shipped back to him for feeding, would be intrastate.

Mr. MORRILL. Probably.

Now I want to make it clear that in dealing with this matter I am dealing with a distinction between the maintenance of State representatives in the yards for the purpose of protecting the interests of the State in a supervisory way, and seeing that any wrong conditions are handled either under appropriate State authority or under the packers and stockyards act—I am making a distinction between that and an attempt by the State to regulate interstate commerce in a regulatory way, and that is the distinction that must be borne in mind in all of this discussion.

The CHAIRMAN. Well, now, as to the extent of your power. You have the power to do the very thing that you people have been doing in the State of Minnesota in the stockyards. Now have they mentioned anything here that you have no jurisdiction over to regulate?

Mr. MORRILL. They have indicated that they thought that we do not have the power to weigh the live stock in the yards with Federal employees, and that if we do have the power, we have not the money. Now that question has not been decided, because we have not felt that we were required to weigh the live stock by the conditions so far existing, and I would hesitate to undertake to put Federal employees in there until I found that it was necessary to do so.

The CHAIRMAN. But you have the power to go there and inspect the scales.

Mr. MORRILL. Yes, sir.

The CHAIRMAN. And to see that they are weighing correctly.

Mr. MORRILL. Yes; we have the power to do everything that Mr. Thompson says that he has been doing.

The CHAIRMAN. Well, they do the weighing. The question is whether you have the power to employ weighers.

Mr. MORRILL. Mr. Thompson does not do the weighing. Mr. Thompson inspects the scales.

The CHAIRMAN. Well, the State employees do the weighing.

Mr. MORRILL. The State employees actually do the weighing, and a charge is collected for that purpose.

The CHAIRMAN. Now, have you the power to employ weighers? They would not expect you to go and weigh, but could you employ people to do the weighing?

Mr. MORRILL. I understand your question, Mr. Chairman, but my reason for not undertaking to say that we have the power is because I have not submitted it for legal opinion as to whether we have or not, because we have not reached the point where we felt that it was necessary for the Government to do the weighing.

The CHAIRMAN. I will be perfectly frank with you and say that that question has been discussed from time to time, and it was not the purpose for you to do the weighing. It was not the purpose to load you up with that expense, but to do the supervising, if thought to be sufficient.

Mr. MORRILL. That is the theory upon which this committee has always proceeded.

The CHAIRMAN. Now, you say you have the power to supervise the weighing, whether it is done by the State or the stockyards?

Mr. MORRILL. I have a reservation as to whether we have the power to supervise the weighing by the State which I would like to discuss when I come to it in the order of my statement.

The CHAIRMAN. You have the supervision over all the weighing?

Mr. MORRILL. We have the supervision over all market agencies and dealers.

Mr. JONES. That is an interesting question, and it has been in my mind, the very question that the chairman has asked you, as to why you can not just let these men go ahead as well as to let the stockyards weigh it. Why not let the State weigh it, if it is working satisfactorily, just as well as the stockyards? Somebody has got to do the weighing, and it seems to be of just as little expense, if not less expensive, to let the State officials do it.

Mr. MORRILL. Well, I think it is a serious question of fact there.

Mr. JONES. Well, of course I am assuming that.

The CHAIRMAN. Do you contend that you have the power to employ weighers?

Mr. MORRILL. I make no contention at all about it, Mr. Chairman. I have not reached the point where it is necessary for me to determine whether I must employ actual weighers on the scales to do the weighing in place of anybody else.

The CHAIRMAN. I know; but that is the question at issue here. That is what we have been discussing here, as to the weighing proposition. That seems to be all these people are interested in.

Mr. MORRILL. Well, does it seem to you, Mr. Chairman, that it is necessary for the Government itself to do the weighing?

The CHAIRMAN. It does not seem so at the present time, as long as there are no complaints. Now, if there are complaints, there may be some justification for it. But very few if any complaints have come in as to the weighing.

Mr. JONES. What is the big idea in taking it away from these State weighers and putting it into the hands of the stockyards? I want to find your motive in that.

Mr. MORRILL. I want to go into the question, but I am not being permitted to do it, so far.

Mr. JONES. There are two things I would like to have the witness tell us. One is what safeguards you propose to throw around the producer in the matter of weights under the administration of this law; and another thing is what safeguards you propose to throw around the producer on the subject of bonds.

The CHAIRMAN. Just confine yourself to those two points. I think you have made yourself clear as to the question of bonds, but the weighing seems to be the only question at issue here.

Mr. MORRILL. Now, of course, I do not need to go over the ground of the national interest in this matter, because the members of the committee themselves in their answers have covered that ground, but I want to call attention to the fact that there are about 65 or so yards that are subject to this law, in about 34 States, and that taking the year 1921 as an example there were receipts of 84,000,000 animals in those 65 yards. And incidentally over 40 per cent of the total number of receipts were shipments out of the yards, that is to say, following the receipts 40 per cent of the animals were shipped out of those yards, and taking one week during this year as an example, with respect to stocker and feeder shipments, as to 12 principal markets of the United States, we found that stocker and feeder shipments went out of those 12 markets to 24 States. That, I think, will suffice to show in a general way the interstate interest in this matter.

Now, if you were to take the rates which have been applied in this bill and apply them to those total receipts and assume that the animals were weighed only once, you would have an expense of over a million dollars for weighing. As a matter of fact, the number of weighings is more than the total of the receipts, so that the expense of weighing would be a great deal more than a million dollars. Taking St. Paul,

alone, if you would apply their weights to their actual receipts you would have an expense of $48,000, whereas their receipts were $66,000, or somewheres in that neighborhood.

The CHAIRMAN. Practically all the stockers and feeders are weighed more than once?

Mr. MORRILL. Yes.

Mr. JONES. And that expense covers other items, as I understand it.

Mr. WELLS. Have you included there the hog shrinking?

Mr. MORRILL. I am talking about what the rates stated in the bill would work out in dollars and cents.

Now, as a matter of fact, as stated here in this committee by the gentleman from Minnesota, their receipts of sixty or seventy thousand dollars, whatever the amount is, are used to pay not only for the expense of weighing but for the expense of shrinkers and for all of the supervision expense in the yard complete. Now, why should we not take the position that the State should just go right on weighing that live stock and charging the rates that are specified here in this bill?

The statement has been made that we can reduce the yardage charges correspondingly. Can we, as a matter of fact? If we should attempt to reduce the yardage charges of the stockyards company by the amount of $66,000, they would promptly call our attention to the fact that the weighing and the shrinkage does not cost that much and that we could not reduce it by that much. As a matter of fact, it is estimated—and Mr. Wells knows the figures better than I do—that the cost of weighing and shrinkage would not be over half of the total amount of the receipts from the weighing charges now imposed by the State.

Now, if we were to apply that same situation in all the yards of the country that I have mentioned, what is to become of the power of the Secretary of Agriculture that he is supposed to have to reduce the cost of marketing live stock?

Now, you may say that the Secretary of Agriculture would have authority or ought to be given authority to regulate the rates charged by the State for this weighing service and to license the weighers. Will the State be willing to reduce the charges to an amount which is the actual cost of the weighing and shrinkage——

Mr. JONES. That is what they ought to do.

Mr. BOWEN. We have made that offer before.

Mr. MORRILL. By the way, I should mention that this bill does not cover the dockage and shrinkage. That, you see, will mean cutting in half the present cost to the shipper, approximately. Now, that would mean that the State would have to pay its own expense of supervision in every other respect. They could not draw on this weighing fund to pay for anything other than weighing. That would certainly be the basis on which we would have to deal with the stockyards company. We could not reduce their cost any more than the cost of the service they do not render.

Mr. THOMPSON. But, Mr. Morrill, you would incorporate in your service of weighing there the cost of the scale tickets and the necessary records, any particular charge that would be legitimate to that service.

Mr. MORRILL. Any legitimate cost of the weighing in itself would have to be considered, either from the standpoint of reducing the rates to the stockyards company or reducing the rate to the State. Now, the serious question to my mind is whether, as a matter of fact, assuming that the State can do this—and I question that they can do what they offer to do—the Secretary of Agriculture can regulate the State. Now, there is a difference between cooperating with the State and regulating the State. I think that will appeal to all of you. We can make a cooperative agreement with a State and the State can withdraw any time it wants to, and we can also, but when it comes to regulation the other party can not withdraw from regulation as long as that regulation is valid. Now this law says that the persons who are subject to the jurisdiction of the Secretary of Agriculture, aside from the stockyards companies and packers, are market agencies and dealers.

Mr. THOMPSON. Cite your section, please.

Mr. MORRILL. And that will be found in (c) and (b) of section 301, as follows:

"(c) The term 'market agency' means any person engaged in the business of (1) buying or selling in commerce live stock at a stockyards on a commission basis or (2) furnishing stockyard services.

"(b) The term 'stockyard services' means services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce, of live stock."

The term "person" is defined in section 2, subdivision (1), as follows:

"The term 'person' includes individuals, partnerships, corporations, and associations."

Is the State in that class? I question it. Now the State, as I said before, up to this time—and the law of the State has not been changed—is operating under laws which, as Mr. Wells states, specify exactly what shall be done. Now I do not know how much discretion the Railroad and Warehouse Commission has to submit itself to regulation by the Secretary of Agriculture, even if the Secretary of Agriculture has power to regulate the commission. And as a matter of fact the commission men and the stockyards, as has been stated here, are taking the position that these State laws under which the Railroad and Warehouse Commission is operating, are invalid because they regulate interstate commerce, and I raise the question with you gentlemen whether Congress can by act of Congress say that a State may regulate interstate commerce?

Mr. TINCHER. I would state here that even the most ardent supporters of these State regulations feel—and one of the best lawyers in the world is on this committee, and has said to me in the last day or two that they were quite sure that when this law got to the Supreme Court of the United States it would be held invalid in view of the recent decisions of that court.

Mr. MORRILL. Now, bear in mind that we are not in control of this situation. Suppose we do elect to let the State remain in there without any interference, and waive the right of regulation, we have no control over the Stockyards Co. and commission men in respect to whether or not they will undertake to contest this law as being invalid, and as a matter of fact they have undertaken to contest it, as has been stated here. We did not institute that litigation.

Mr. JONES. I think your construction is probably correct as to all these regulations that are made by the State. However, I do not see that there is anything in the law to prevent you—and I would like to know if you do—from issuing a regulation to permit these State officials to do the weighing provided they do not charge more than a certain amount, and specify the amount.

Mr. MORRILL. Now, how can we enforce that regulation, if the definition of market agency disposes of that question?

Mr. BOWEN. May I answer that?

Mr. JONES. Yes.

Mr. BOWEN. We have a specific law that provides for us fixing yardage charges and feed charges. Now we recognize by the passage of this act that that overrides our authority, and we are not attempting to fix any yardage charges. It also provides for the regulation of such charges as weighing, and it says that the schedule shall contain these different items. Now we have taken the position that they have the right of supervision as to the weighing.

Mr. JONES. But the question he raises is a serious question as to whether or not if he undertook to adopt your weighers, whether he could have the privilege of regulating these State agencies in the form of weighers? Here is a weigher that is created by the State. Therefore he is the State in so far as his activities are concerned, because the representative of the State, for practical purposes, is the State. Now he undertakes to say how much this weigher shall charge, and what his duties shalll be.

Mr. BOWEN. Section 306 gives him that authority.

Mr. MORRILL. It should be borne in mind that the individual weigher is nothing but a salaried employee. He does not make the fees.

Mr. JONES. The principal is the man that counts. The State is the principal.

Mr. BOWEN. The Secretary of Agriculture has got the right to make those weighing fees under that section right there.

Mr. TINCHER. I want to ask leave at this time to make a part of the hearings document headed "Supreme Court of the United States," being the decision of the Supreme Court in the case of Stafford, et al. *v.* Burton, et al. You may want some copies of that.

The CHAIRMAN. And the packers and stockyards act, 1921. Is there any objection? Without objection it will be so ordered.

(The packers and stockyards act, 1921, is here printed in the record in full, as follows:)

[PUBLIC—NO. 51—67TH CONGRESS.]

[H. R. 6320.]

AN ACT To regulate interstate and foreign commerce in live stock, live-stock products, dairy products poultry, poultry products, and eggs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I.—DEFINITIONS.

This act may be cited as the "Packers and stockyards act, 1921."

SEC. 2. (a) When used in this act—

(1) The term "person" includes individuals, partnerships, corporations, and associations;

(2) The term "Secretary" means the Secretary of Agriculture;

(3) The term "meat food products" means all products and by-products of the slaughtering and meat-packing industry—if edible;

(4) The term "live stock" means cattle, sheep, swine, horses, mules, or goats—whether live or dead;

(5) The term "live-stock products" means all products and by-products (other than meats and meat food products) of the slaughtering and meat-packing industry derived in whole or in part from live stock; and

(6) The term "commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia.

(b) For the purpose of this act (but not in any wise limiting the foregoing definition) a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the live-stock and meat-packing industries, whereby live stock, meats, meat food products, live-stock products, dairy products, poultry, poultry products, or eggs are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for slaughter of live stock within the State and the shipment outside the State of the products resulting from such slaughter. Articles normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

TITLE II.—PACKERS.

SEC. 201. When used in this act—

The term "packer" means any person engaged in the business (a) of buying live stock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of manufacturing or preparing live-stock products for sale or shipment in commerce, or (d) of marketing meats, meat food products, live-stock products, dairy products, poultry, poultry products, or eggs in commerce; but no person engaged in such business of manufacturing or preparing live-stock products or in such marketing business shall be considered a packer unless—

(1) Such person is also engaged in any business referred to in clause (a) or (b) above, or unless

(2) Such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees, any interest in any business referred to in clause (a) or (b) above, or unless

(3) Any interest in such business of manufacturing or preparing live-stock products, or in such marketing business is owned or controlled, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees, by any person engaged in any business referred to in clause (a) or (b) above, or unless

(4) Any person or persons jointly or severally, directly or indirectly, through stock ownership or control or otherwise, by themselves or through their agents, servants, or employees, own or control in the aggregate 20 per centum or more of the voting power

or control in such business of manufacturing or preparing live-stock products, or in such marketing business and also 20 per centum or more of such power or control in any business referred to in clause (a) or (b) above.

SEC. 202. It shall be unlawful for any packer to:

(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in commerce; or

(b) Make or give, in commerce, any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever, or subject, in commerce, any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; or

(c) Sell or otherwise transfer to or for any other packer, or buy or otherwise receive from or for any other packer, any article for the purpose or with the effect of apportioning the supply in commerce between any such packers, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly in commerce; or

(d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce; or

(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce; or

(f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business in commerce, or (2) to apportion purchases or sales of any article in commerce, or (3) to manipulate or control prices in commerce; or

(g) Conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivision (a), (b), (c), (d), or (e).

SEC. 203. (a) Whenever the Secretary has reason to believe that any packer has violated or is violating any provision of this title, he shall cause a complaint in writing to be served upon the packer, stating his charges in that respect, and requiring the packer to attend and testify at a hearing at a time and place designated therein, at least thirty days after the service of such complaint; and at such time and place there shall be afforded the packer a reasonable opportunity to be informed as to the evidence introduced against him (including the right of cross-examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe. Any person for good cause shown may on application be allowed by the Secretary to intervene in such proceeding, and appear in person on by counsel. At any time prior to the close of the hearing the Secretary may amend the complaint; but in case of any amendment adding new charges the hearing shall, on the request of the packer, be adjourned for a period not exceeding fifteen days.

(b) If, after such hearing, the Secretary finds that the packer has violated or is violating any provisions of this title covered by the charges, he shall make a report in writing in which he shall state his findings as to the facts, and shall issue and cause to be served on the packer an order requiring such packer to cease and desist from continuing such violation. The testimony taken at the hearing shall be reduced to writing and filed in the records of the Department of Agriculture.

(c) Until a transcript of the record in such hearing has been filed in a circuit court of appeals of the United States, as provided in section 204, the Secretary at any time upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the packer to be heard, may amend or set aside the report or order, in whole or in part.

(d) Complaints, orders, and other processes of the Secretary under this section may be served in the same manner as provided in section 5 of the act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

SEC. 204. (a) An order made under section 203 shall be final and conclusive unless within thirty days after service the packer appeals to the circuit court of appeals for the circuit in which he has his principal place of business, by filing with the clerk of such court a written petition praying that the Secretary's order be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such packer will pay the costs of the proceedings if the court so directs.

(b) The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the complaint, the evidence, and the report and order. If before such transcript is

led the Secretary amends or sets aside his report or order, in whole or in part, the etitioner may amend the petition within such time as the court may determine, on otice to the Secretary.

(c) At any time after such transcript is filed the court, on application of the Secetary, may issue a temporary injunction restraining, to the extent it deems proper, he packer and his officers, directors, agents, and employees from violating any of the provisions of the order pending the final determination of the appeal.

(d) The evidence so taken or admitted, duly certified and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a preferred cause and shall be expedited in every way.

(e) The court may affirm, modify, or set aside the order of the Secretary.

(f) If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the hearing to be reopened for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings and his recommendations, if any, for the modification or setting aside of his order, with the return of such additional evidence.

(g) If the circuit court of appeals affirms or modifies the order of the Secretary, its decree shall operate as an injunction to restrain the packer and his officers, directors, agents, and employees from violating the provisions of such order or such order as modified.

(h) The circuit court of appeals shall have exclusive jurisdiction to review and to affirm, set aside, or modify such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 240 of the Judicial Code, if such writ is duly applied for within sixty days after entry of the decree. The issue of such writ shall not operate as a stay of the decree of the circuit court of appeals, in so far as such decree operates as an injunction, unless so ordered by the Supreme Court.

(i) For the purposes of this title the term "circuit court of appeals," in case the principal place of business of the packer is in the District of Columgia, means the Court of Appeals of the District of Columbia.

SEC. 205. Any packer, or any officer, director, agent, or employee of a packer who fails to obey any order of the Secretary issued under the provisions of section 203, or such order as modified—

(1) After the expiration of the time allowed for filing a petition in the circuit court of appeals to set aside or modify such order, if no such petition has been filed within such time; or

(2) After the expiration of the time allowed for applying for a writ of certiorari, if such order, or such order as modified, has been sustained by the circuit court of appeals and no such writ has been applied for within such time; or

(3) After such order, or such order as modified, has been sustained by the courts as provided in section 204: shall on conviction be fined not less than $500 nor more than $10,000, or imprisoned for not less than six months nor more than five years, or both. Each day during which such failure continues shall be deemed a separate offense.

TITLE III.—STOCKYARDS.

SEC. 301. When used in this act—

(a) The term "stockyard owner" means any person engaged in the business of conducting or operating a stockyard;

(b) The term "stockyard services" means services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce, of live stock;

(c) The term "market agency" means any person engaged in the business of (1) buying or selling in commerce live stock at a stockyard on a commission basis or (2) furnishing stockyard services; and

(d) The term "dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce live stock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser.

SEC. 302. (a) When used in this title the term "stockyard" means any place, establishment, or facility commonly known as stockyards, conducted or operated for compensation or profit as a public market, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce. This title shall not apply

to a stockyard of which the area normally available for handling live stock, exclusive of runs, alleys, or passage ways, is less than twenty thousand square feet.

(b) The Secretary shall from time to time ascertain, after such inquiry as he deems necessary, the stockyards which come within the foregoing definition, and shall give notice thereof to the stockyard owners concerned, and give public notice thereof by posting copies of such notice in the stockyard, and in such other manner as he may determine. After the giving of such notice to the stockyard owner and to the public, the stockyard shall remain subject to the provisions of this title until like notice is given by the Secretary that such stockyard no longer comes within the foregoing definition.

SEC. 303. After the expiration of thirty days after the Secretary has given public notice that any stockyard is within the definition of section 302, by posting copies of such notice in the the stockyard, no person shall carry on the business of a market agency or dealer at such stockyard unless he has registered with the Secretary under such rules and regulations as the Secretary may prescribe, his name and address, the character of business in which he is engaged and the kinds of stockyard services, if any, which he furnishes at such stockyard. Whoever violates the provisions of this section shall be liable to a penalty of not more than $500 for each such offense and not more than $25 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

SEC. 304. It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard.

SEC. 305. All rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful.

SEC. 306. (a) Within sixty days after the Secretary has given public notice that a stockyard is within the definition of section 302, by posting copies of such notice in the stockyard, the stockyard owner and every market agency at such stockyard shall file with the Secretary, and print and keep open to public inspection at the stockyard, schedules showing all rates and charges for the stockyard services furnished by such person at such stockyard. If a market agency commences business at the stockyard after the expiration of such sixty days such schedules must be filed before any stockyard services are furnished.

(b) Such schedules shall plainly state all such rates and charges in such detail as the Secretary may require, and shall also state any rules or regulations wihch in any manner change, affect, or determine any part or the aggregate of such rates or charges, or the value of the stockyard services furnished. The Secretary may determine and prescribe the form and manner in which such schedules shall be prepared, arranged, and posted, and may from time to time make such changes in respect thereto as may be found expedient.

(c) No changes shall be made in the rates or charges so filed and published, except after ten days' notice to the Secretary and to the public filed and published as aforesaid, which shall plainly state the changes proposed to be made and the time such changes will go into effect; but the Secretary may, for good cause shown, allow changes on less than ten days' notice, or modify the requirements of this section in respect to publishing, posting, and filing of schedules, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

(d) The Secretary may reject and refuse to file any schedule tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the Secretary shall be void and its use shall be unlawful.

(e) Whenever there is filed with the Secretary any schedule, stating a new rate or charge, or a new regulation or practice affecting any rate or charge, the Secretary may either upon complaint or upon his own initiative without complaint, at once, and if he so orders without answer or other formal pleading by the person filing such schedule, but upon reasonable notice, enter upon a hearing concerning the lawfulness of such rates, charge, regulation, or practice, and pending such hearing and decision thereon the Secretary, upon filing with such schedule and delivering to the person filing it a statement in writing of his reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, regulation, or practice but not for a longer period than thirty days beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, regulation, or practice goes into effect, the Secretary may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If any such hearing can not be concluded within the period of suspension the Secretary may extend the time of suspension for a further period not exceeding

thirty days, and if the proceeding has not been concluded and an order made at the expiration of such thirty days, the proposed change of rate, charge, regulation, or practice shall go into effect at the end of such period.

(f) After the expiration of the sixty days referred to in subdivision (a) no person shall carry on the business of a stockyard owner or market agency unless the rates and charges for the stockyard services furnished at the stockyard have been filed and published in accordance with this section and the orders of the Secretary made thereunder; nor charge, demand, or collect a greater or less or different compensation for such services than the rates and charges specified in the schedules filed and in effect at the time; nor refund or remit in any manner any portion of the rates or charges so specified (but this shall not prohibit a cooperative association of producers from bona fide returning to its members, on a patronage basis, its excess earnings on their live stock, subject to such regulations as the Secretary may prescribe); nor extend to any person at such stockyard any stockyard services except such as are specified in such schedules.

(g) Whoever fails to comply with the provisions of this section or of any regulation or order of the Secretary made thereunder shall be liable to a penalty of not more than $500 for each such offense, and not more than $25 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

(h) Whoever willfully fails to comply with the provisions of this section or of any regulation or order of the Secretary made thereunder shall on conviction be fined not more than $1,000, or imprisoned not more than one year, or both.

SEC. 307. It shall be the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services, and every unjust, unreasonable, or discriminatory regulation or practice is prohibited and declared to be unlawful.

SEC. 308. (a) If any stockyard owner, market agency, or dealer, violates any of the provisions of sections 304, 305, 306, or 307, or of any order of the Secretary made under this title, he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.

(b) Such liability may be enforced either (1) by complaint to the Secretary as provided in section 309, or (2) by suit in any district court of the United States of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies.

SEC. 309. (a) Any person complaining of anything done or omitted to be done by any stockyard owner, market agency, or dealer (hereinafter in this section referred to as the "defendant") in violation of the provisions of sections 304, 305, 306, or 307, or of an order of the Secretary made under this title, may, at any time within ninety days after the cause of action accrues, apply to the Secretary by petition which shall briefly state the facts, whereupon the complaint thus made shall be forwarded by the Secretary to the defendant, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be specified by the Secretary. If the defendant within the time specified makes reparation for the injury alleged to be done he shall be relieved of liability to the complainant only for the particular violation thus complained of. If the defendant does not satisfy the complaint within the time specified, or there appears to be any reasonable ground for investigating the complaint, it shall be the duty of the Secretary to investigate the matters complained of in such manner and by such means as he deems proper.

(b) The Secretary, at the request of the live-stock commissioner, Board of Agriculture, or other agency of a State or Territory, having jurisdiction over stockyards in such State or Territory, shall investigate any complaint forwarded by such agency in like manner and with the same authority and powers as in the case of a complaint made under subdivision (a).

(c) The Secretary may at any time institute an inquiry on his own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made to or before the Secretary, by any provision of this title, or concerning which any question may arise under any of the provisions of this title, or relating to the enforcement of any of the provisions of this title. The Secretary shall have the same power and authority to proceed with any inquiry instituted upon his own motion as though he had been appealed to by petition, including the power to make and enforce any order or orders in the case or relating to the matter or thing concerning which the inquiry is had, except orders for the payment of money.

(d) No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

[illegible] after hearing [illegible] complaint the Secretary determines that the complainant is entitled to an award of damages the Secretary shall make an order directing the respondent to pay to the complainant the sum to which he is entitled on or before a day named.

If the respondent does not comply with an order for the payment of money within the time limit in such order the complainant or any person for whose benefit such order was made may within one year after the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal office of the respondent or in any State court having general jurisdiction in any district in which the respondent may be found a petition setting forth briefly the causes for which he claims damages and the order of the Secretary in the premises. Such suit in the district court of the United States shall proceed in all respects like other civil suits for damages except that on the trial of such suit the findings and order of the Secretary shall be prima facie evidence of the facts therein stated and except that the plaintiff shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his application for review. He shall be allowed a reasonable attorney's [illegible]

Whenever after full hearing upon a complaint made as provided in [illegible] investigation and hearing made [illegible] pending complaint [illegible] that any rate, [illegible] for or in connection [illegible] unreasonable, [illegible]

[illegible] just and reasonable rate or charge, [illegible] maximum or minimum [illegible] and what particular practice [illegible] followed; and [illegible] shall cease and desist from [illegible] that it does or will exist; [illegible] charge for the furnishing [illegible] in excess of the [illegible] and 3 shall [illegible]

[illegible] provisions of this title, or in [illegible] market agency [illegible] the Secretary after full [illegible] of any stockyard owner [illegible] of selling on a commission [illegible] shipment, [illegible] rates or charges in interstate [illegible] commerce in live [illegible] against [illegible] and declared [illegible] practice [illegible] will remove such advantage [illegible] practices [illegible] parties [illegible] the decision or order of [illegible]

[illegible] market agency or dealer [illegible] device [illegible] on a commission basis [illegible] handling [illegible]

[illegible] whenever the [illegible] market agency or dealer [illegible] and full hearing [illegible] such violation [illegible]

[illegible] the Secretary under [illegible] within such [illegible] and shall continue [illegible] as is provided by the [illegible]

EC. 314. (a) Any stockyard owner, market agency, or dealer who knowingly fails bey any order made under the provisions of sections 310, 311, or 312 shall forfeit he United States the sum of $500 for each offense. Each distinct violation shall a separate offense, and in case of a continuing violation each day shall be deemed parate offense. Such forfeiture shall be recoverable in a civil suit in the name he United States.

b) It shall be the duty of the various district attorneys, under the direction of the orney General, to prosecute for the recovery of forfeitures. The costs and expense uch prosecution shall be paid out of the appropriation for the expenses of the courts he United States.

EC. 315. If any stockyard owner, market agency, or dealer fails to obey any order he Secretary other than for the payment of money while the same is in effect, the retary, or any party injured thereby, or the United States by its Attorney General, y apply to the district court for the district in which such person has his principal ce of business for the enforcement of such order. If after hearing the court deter- ies that the order was lawfully made and duly served and that such person is in bedience of the same, the court shall enforce obedience to such order by a writ of unction or other proper process, mandatory or otherwise, to restrain such person, officers, agents, or representatives from further disobedience of such order or to oin upon him or them obedience to the same.

EC. 316. For the purposes of this title, the provisions of all laws relating to the sus- ding or restraining the enforcement, operation, or execution of, or the setting aside whole or in part the orders of the Interstate Commerce Commission, are made licable to the jurisdiction, powers, and duties of the Secretary in enforcing the visions of this title, and to any person subject to the provisions of this title.

TITLE IV.—GENERAL PROVISIONS.

EC. 401. Every packer, stockyard owner, market agency, and dealer shall keep h accounts, records, and memoranda as fully and correctly disclose all transactions olved in his business, including the true ownership of such business by stock- ding or otherwise. Whenever the Secretary finds that the accounts, records, and moranda of any such person do not fully and correctly disclose all transactions olved in his business, the Secretary may prescribe the manner and form in which h accounts, records, and memoranda shall be kept, and thereafter any such person o fails to keep such accounts, records, and memoranda in the manner and form scribed or approved by the Secretary shall upon conviction be fined not more than 00, or imprisoned not more than three years, or both.

EC. 402. For the efficient execution of the provisions of this act, and in order to vide information for the use of Congress, the provisions (including penalties) of tions 6, 8, 9, and 10 of the act entitled "An act to create a Federal Trade Commis- n, to define its powers and duties, and for other purposes," approved September 26, 4, are made applicable to the jurisdiction, powers, and duties of the Secretary in orcing the provisions of this act and to any person subject to the provisions of this , whether or not a corporation. The Secretary, in person or by such agents as he y designate, may prosecute any inquiry necessary to his duties under this act in part of the United States.

EC. 403. When construing and enforcing the provisions of this act, the act, omission, ailure of any agent, officer, or other person acting for or employed by any packer, ckyard owner, market agency, or dealer, within the scope of his employment or ce, shall in every case also be deemed the act, omission, or failure of such packer, ckyard owner, market agency, or dealer, as well as that of such agent, officer, or er person.

EC. 404. The Secretary may report any violation of this act to the Attorney Gen- l of the United States, who shall cause appropriate proceedings to be commenced l prosecuted in the proper courts of the United States without delay.

EC. 405. Nothing contained in this act, except as otherwise provided herein, ll be construed—

a) To prevent or interfere with the enforcement of, or the procedure under, the visions of the act entitled "An act to protect trade and commerce against unlaw- restraints and monopolies," approved July 2, 1890, the act entitled "An act to plement existing laws against unlawful restraints and monopolies, and for other rposes," approved October 15, 1914, the interstate commerce act as amended, act entitled "An act to promote export trade, and for other purposes," approved ril 10, 1918, or sections 73 to 77, inclusive, of the act of August 27, 1894, entitled n act to reduce taxation, to provide revenue for the Government, and for other rposes," as amended by the act entitled "An act to amend sections seventy-three

(e) If after hearing on a complaint the Secretary determines that the complainant is entitled to an award of damages, the Secretary shall make an order directing the defendant to pay to the complainant the sum to which he is entitled on or before a day named.

(f) If the defendant does not comply with an order for the payment of money money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may within one year of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the defendant or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of the Secretary in the premises. Such suit in the district court shall proceed in all respects like other civil suits for damages except that the findings and orders of the Secretary shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the suit.

SEC. 310. Whenever after full hearing upon a complaint made as provided in section 309, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed.

SEC. 311. Whenever in any investigation under the provisions of this title, or in any investigation instituted by petition of the stockyard owner or market agency concerned, which petition is hereby authorized to be filed, the Secretary after full hearing finds that any rate, charge, regulation, or practice of any stockyard owner or market agency, for or in connection with the buying or selling on a commission basis or otherwise, receiving, marketing, feeding, holding, delivery, shipment, weighing, or handling, not in commerce, of live stock, causes any undue or unreasonable advantage, prejudice, or preference as between persons or localities in intrastate commerce in live stock on the one hand and interstate or foreign commerce in live stock on the other hand, or any undue, unjust, or unreasonable discrimination against interstate or foreign commerce in live stock, which is hereby forbidden and declared to be unlawful, the Secretary shall prescribe the rate, charge, regulation, or practice thereafter to be observed, in such manner as, in his judgment, will remove such advantage, preference, or discrimination. Such rates, charges, regulations, or practices shall be observed while in effect by the stockyard owners or market agencies parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

SEC. 312. (a) It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with the receiving, marketing, buying or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing or handling, in commerce at a stockyard, of live stock.

(b) Whenever complaint is made to the Secretary by any person, or whenever the Secretary has reason to believe, that any stockyard owner, market agency, or dealer is violating the provisions of subdivision (a), the Secretary after notice and full hearing may make an order that he shall cease and desist from continuing such violation to the extent that the Secretary finds that it does or will exist.

SEC. 313. Except as otherwise provided in this Act, all orders of the Secretary under this title, other than orders for the payment of money, shall take effect within such reasonable time, not less than five days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, according as is prescribed in the order, unless such order is suspended or modified or set aside by the Secretary or is suspended or set aside by a court of competent jurisdiction.

SEC. 314. (a) Any stockyard owner, market agency, or dealer who knowingly fails to obey any order made under the provisions of sections 310, 311, or 312 shall forfeit to the United States the sum of $500 for each offense. Each distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense. Such forfeiture shall be recoverable in a civil suit in the name of the United States.

(b) It shall be the duty of the various district attorneys, under the direction of the Attorney General, to prosecute for the recovery of forfeitures. The costs and expense of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

SEC. 315. If any stockyard owner, market agency, or dealer fails to obey any order of the Secretary other than for the payment of money while the same is in effect, the Secretary, or any party injured thereby, or the United States by its Attorney General, may apply to the district court for the district in which such person has his principal place of business for the enforcement of such order. If after hearing the court determines that the order was lawfully made and duly served and that such person is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person, his officers, agents, or representatives from further disobedience of such order or to enjoin upon him or them obedience to the same.

SEC. 316. For the purposes of this title, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this title, and to any person subject to the provisions of this title.

TITLE IV.—GENERAL PROVISIONS.

SEC. 401. Every packer, stockyard owner, market agency, and dealer shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stockholding or otherwise. Whenever the Secretary finds that the accounts, records, and memoranda of any such person do not fully and correctly disclose all transactions involved in his business, the Secretary may prescribe the manner and form in which such accounts, records, and memoranda shall be kept, and thereafter any such person who fails to keep such accounts, records, and memoranda in the manner and form prescribed or approved by the Secretary shall upon conviction be fined not more than $5,000, or imprisoned not more than three years, or both.

SEC. 402. For the efficient execution of the provisions of this act, and in order to provide information for the use of Congress, the provisions (including penalties) of sections 6, 8, 9, and 10 of the act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this act and to any person subject to the provisions of this act, whether or not a corporation. The Secretary, in person or by such agents as he may designate, may prosecute any inquiry necessary to his duties under this act in any part of the United States.

SEC. 403. When construing and enforcing the provisions of this act, the act, omission, of failure of any agent, officer, or other person acting for or employed by any packer, stockyard owner, market agency, or dealer, within the scope of his employment or office, shall in every case also be deemed the act, omission, or failure of such packer, stockyard owner, market agency, or dealer, as well as that of such agent, officer, or other person.

SEC. 404. The Secretary may report any violation of this act to the Attorney General of the United States, who shall cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay.

SEC. 405. Nothing contained in this act, except as otherwise provided herein, shall be construed—

(*a*) To prevent or interfere with the enforcement of, or the procedure under, the provisions of the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, the interstate commerce act as amended, the act entitled "An act to promote export trade, and for other purposes," approved April 10, 1918, or sections 73 to 77, inclusive, of the act of August 27, 1894, entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," as amended by the act entitled "An act to amend sections seventy-three

and seventy-six of the act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An act to reduce taxation, to provide revenue for the Government, and for other purposes,' " approved February 12, 1913, or

(b) To alter, modify, or repeal such acts or any part of parts thereof, or

(c) To prevent or interfere with any investigation, proceeding, or prosecution begun and pending at the time this act becomes effective.

SEC. 406. (a) Nothing in this act shall affect the power or jurisdiction of the Interstate Commerce Commission, nor confer upon the Secretary concurrent power or jurisdiction over any matter within the power or jurisdiction of such commission.

(b) On and after the enactment of this act, and so long as it remains in effect, the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this act is made subject to the jurisdiction of the Secretary, except in cases in which, before the enactment of this act, complaint has been serfed under section 5 of the act entitled "An act to create a Federal Trade Commission, to define its power and duties, and for other purposes," approved September 26, 1914, or under section 11 of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case.

SEC. 407. The Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this act and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this act in the District of Columbia and elsewhere, and as may be appropriated for by Congress, and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for such purpose.

SEC. 408. If any provision of this act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the act and of the application of such provision to other persons and circumstances shall not be affected thereby.

Approved, August 15, 1921.

(The decision of the Supreme Court of the United States in the case of Stafford et al. *v.* Burton et al., Supreme Court of the United States, Nos. 687 and 691, October term, 1921, is here printed in the record, as follows:)

Supreme Court of the United States. Nos. 687 and 691. October Term, 1921. T. F. Stafford et al., appellants, *v.* Henry C. Wallace, Secretary of Agriculture, and Charles F. Clyne, United States attorney for the Northern District of Illinois (687). J. E. Burton et al., appellants, *v.* Charles F. Clyne, United States attorney for the Northern District of Illinois (691). Appeals from the United States District Court for the Northern District of Illinois. May 1, 1922.

These cases involve the constitutionality of the "Packers and stockyards act of 1921, approved August 15, 1921," so far as that act provides for the supervision by Federal authority of the business of the commission men and of the live-stock dealers in the great stockyards of the country. They are appeals from the orders of the District Court for the Northern District of Illinois refusing to grant interlocutory injunctions as prayed. The bills sought to restrain enforcement of orders of the Secretary of Agriculture in carrying out the act, directed against the appellants in No. 687, as the commission men in the Union Stockyards of Chicago, and against the appellants in No. 691, as dealers in the same yards. The ground upon which the prayers for relief are based is that the Secretary's orders are void, because made under an act invalid as to each class of appellants. The bill in No. 687 makes defendants the Secretary of Agriculture and the United States attorney for the Northern District of Illinois, averring that the latter is charged with the duty of enforcing the severe penalties imposed by the act for failure to comply with orders of the Secretary thereunder. The bill in No. 691 makes the United States attorney the only defendant, with the same averment.

The two bills in substance allege that the Union Stockyards & Transit Co. was incorporated by the State of Illinois in 1865, and given authority to acquire, construct, and maintain inclosures, structures, and railway lines for the reception, safekeeping, feeding, watering and for weighing, delivery, and transfer of cattle and live stock of

very description, and to carry on a public live-stock market with all the necessary ppurtenances and facilities; that it is the largest stockyards in the world, and in 920 handled 15,000,000 head of live stock of all descriptions, including cattle alves, hogs, and sheep, shipped mainly from outside the State of Illinois; that the ive stock are loaded at the point of origin and shipped under a shipping contract which is a straight bill of lading consigning them to the commission merchants at the yard; that on arrival the live stock are at once driven from the cars by the commission merchant, who is the consignee, to the pens assigned by the stockyards company to such merchant for his use; that they are then in the exclusive possession of the commission merchant, are watered and fed by the stockyards company at his request; that with the delivery to the commission merchant, the transportation is completely ended; that all the live stock consigned to commission merchants are sold by them for a commission or brokerage, and not on their own account; that they are sold at the stockyards and nowhere else; that the commissions are fixed at an established rate per head; that the commission men remit to the owners and shippers the proceeds of sale, less their commission and the freight and yard charges paid by them; that the live stock are sold (1) to purchasers who buy the same for slaughtering at packing houses, located at the stockyards or adjacent thereto; (2) to purchasers who buy to ship to packing houses outside the State of Illinois for slaughter; (3) to purchasers who buy to feed and fatten the same; and (4) to dealers or traders; that about one-third of all the live stock received are sold to the dealers; that not until after the delivery of the live stock to the commission merchants and the transportation has completely ceased, does the business of the dealers begin; that they do not buy or sell on commission, but buy and sell for cash exclusively for their own profit; that the greater part of live stock received by commission men at the yards are in carload or trainload lots and a substantial part are not graded or conditioned to meet the specific requirements of the buyers; that the dealers after purchase put the live stock in pens assigned to them by the stockyards owner and do the sorting and classification; that the dealers buy in open market in competition with each other; that they pay the expense of the custody, care, and feeding and watering the stock while they hold them; that they sell promptly and have nothing to do with the shipment of the live stock they sell from the yards to points outside.

In the bill in No. 691, the appellants aver that they are members of the Chicago Live Stock Exchange and of the National Live Stock Exchange, the members of which are dealers in all the stockyards of the country numbering 2,000, and that they bring their bill for all of them who may choose to join and take the benefit of the litigation.

The chairman of the Committee on Agriculture in reporting to the House of Representatives the bill, which became the act here in question (May 18, 1921, 67th Cong., 1st sess., Rep. No. 77, to accompany H. R. 6320), referred to the testimony printed in the House committee hearings of the Sixty-sixth Congress, second session, Committee on Agriculture, volume 220–222 and 220–223, as furnishing the contemporaneous history and information of the evils to be remedied upon which the bill was framed.

It appeared from the data before the committee that for more than two decades it had been charged that the five great packing establishments of Swift, Armour, Cudahy, Wilson, and Morris, called the "Big Five", were engaged in a conspiracy in violation of the antitrust law, to control the business of the purchase of the live stock, their preparation for use in meat products, and the distribution and sale thereof in this country and abroad. In 1903, a bill in equity was filed by the United States to enjoin further conduct of this alleged conspiracy, as a violation of the antitrust law, and an injunction issued. United States *v.* Swift (122 Fed. Rep. 529). The case was taken on appeal to this court, which sustained the injunction. Swift *v.* United States (196 U. S. 375). In 1912, these same defendants or their successors in business were indicted and tried for such violation of the antitrust law and acquitted. (See House committee hearings before Committee on Agriculture, 1920, vol. 220–222, subject, meat packer legislation, 718.) It further appeared that on February 7, 1917, the President directed the Federal Trade Commission to investigate and report the facts relating to this industry and kindred subjects. The commission reported that "the Big Five" packing firms, had complete control of the trade from the producer to the consumer, had eliminated competition, and that one of the essential means by which this was made possible was their ownership of a controlling part of the stock in the stockyards companies of the country. The commission stated its conclusions as follows:

"The big packers' control of these markets is much greater than these statistics indicate. In the first place, they are the largest and in some cases practically the only buyers at these various markets and as such, hold a whip hand over the commission men who act as the intermediaries in the sale of live stock.

"The packers' power is increased by the fact that they control all the facilities through which live stock is sold to themselves. Control of stockyards comprehends control of live-stock exchange buildings where commission men have their offices; control of assignment of pens to commission men; control of banks and cattle loan companies; control of terminal and switching facilities; control of yardage services and charges; control of weighing facilities; control of the disposition of dead animals and other profitable yard monopolies; and in most cases control of all packing-house and other business sites. Packer-owned stockyards give these interests access to records containing confidential shipping information which is used to the disadvantage of shippers who have attempted to forward their live stock to a second market." (Summary of report of the Federal Trade Commission on meat packing industry, July 3, 1918.)

Following the report of the Federal Trade Commission, and before the passage of this act, a bill in equity for injunction was filed in 1920, in the Supreme Court of the District of Columbia, in which, on February 27 of that year, was entered a decree against the same Big Five packers, consented to by them with the saving clause that it should not be considered as an admission that they had been guilty of violations of law. The decree enjoined the packers from doing many acts in pursuance of a combination to monopolize the purchase and control the price of live stock and the sale and distribution of meat products and of many by-products in preparation of meats and in unrelated lines not here relevant, and from continuing to own or control, directly or indirectly, any interest in any public stockyard market company in the United States, or in any stockyard market journal, or in any stockyard terminal railroad or in any public cold-storage warehouse. (House committee hearings, Committee on Agriculture, 1920, vol. 220–222, page 720, "Meat packer legislation.")

It appears from these committee hearings that the dealers do not buy fat cattle generally or largely compete with packers in such purchases. They buy either the thin cattle known as "stockers and feeders," which they dispose of to farmers and stock feeders, to be taken to the country for farm use and fattening, or they buy mixed lots and cull out of them the fat cattle. These they dispose of to packers either directly or through commission men. The proportion of all the hogs passing through the yards in 1919 handled by these traders, speculators, or scalpers, as they are indifferently called, was 30 per cent. Of all the butcher cattle they handled 20 per cent, of the beef cattle 10 per cent, and of "the stockers and feeders" 80 per cent. At Kansas City this last figure was higher, reaching 95 per cent. (Committee hearings, p. 2140.)

It was conceded that of all the live stock coming into the Chicago stockyards and going out, only a small percentage, less than 10 per cent, is shipped from or to Illinois.

The complaints of the shippers of live stock against the charges and practices, working to their prejudice in the conduct of the stockyards, the commission men and the dealers were, first, suppression of competition in purchases through agreement by which one packer would buy a carload or trainload of cattle and turn over half of it to the only other packer buying in the local market. Second, "wiring on." A shipper would send a carload or trainload of stock to one stockyard. Finding the market unsatisfactory, he would ship them farther east. The packers' agents were promptly advised at the second stockyards, and, controlling the price there, they made it the same as at the first stockyards, though the shipper had paid the freight and had to stand the "shrink" of the cattle from the journey. Third, the charges in the stockyards for hay and other facilities were excessive. Fourth, the duplication of commissions through the collusion of the commission men and the dealers, by which commission men would sell at a lower price to dealers than to outside buyers and drive the latter to buying from dealers through commission men, forcing two commissions. Fifth, the monopoly conferred by the stockyards owner on a company in which packers were largely interested, of buying at a fixed price of $5 a head all dead cattle for rendering purposes, when they were worth more. Sixth, the frequency with which commission men reported to shippers that live stock had been crippled and had to be sold in that condition at a lower price, arousing suspicion as to the fact, and if it was a fact, as to the cause of the crippling. (Pp. 22, 23, 24, also 466, et seq., 1086; 2125, 2244, et seq. Committee of house hearings—Committee on Agriculture, vols. 220–222, 66th Cong., 2d sess.)

Mr. Chief Justice Taft, after making the foregoing statement of the case, delivered the opinion of the court.

Section 316 of the packers and stockyards act of 1921 makes applicable to suits for injunction against the orders of the Secretary of Agriculture, the same procedure, original and appellate, provided in the act of October 22, 1913 (38 Stat. 208, 219, 220), for suits for injunction against the orders of the Interstate Commerce Commission. The latter act gives a right to a direct appeal to this court from the granting or refusing an interlocutory injunction. Hence the appeals herein are properly prosecuted.

In each bill the averments are sufficient, if the act be invalid, to show equitable grounds for injunction in the severe penalties incurred for failure to comply with the act before opportunity can be given to test its validity. (Ex parte Young, 209 U. S. 123.)

We have framed the statement of the case, not for the purpose of deciding the issues of fact mooted between the packers and their accusers before the Federal Trade Commission or the Committees of Agriculture in Congress, but only to enable us to consider and discuss the act whose validity is here in question in the light of the environment in which Congress passed it. It was for Congress to decide from its general information and from such special evidence as was brought before it the nature of the evils actually present or threatening, and to take such steps by legislation within its power as it deemed proper to remedy them. It is helpful for us in interpreting the effect and scope of the act in order to determine its validity to know the conditions under which Congress acted. (Chicago Board of Trade *v.* United States, 246 U. S. 231, 238; Danciger *v.* Cooley, 248 U. S. 319, 322.)

The packers and stockyards act of 1921 seeks to regulate the business of the packers done in interstate commerce and forbids them to engage in unfair, discriminatory, or deceptive practices in such commerce, or to subject any person to unreasonable prejudice therein, or to do any of a number of acts to control prices or establish a monopoly in the business. It constitutes the Secretary of Agriculture a tribunal to hear complaints and make findings thereon, and to order the packers to cease any forbidden practice. An appeal is given to the circuit court of appeals from these findings and orders. They are to be enforced by the district court by penalty if not appealed from and if disobeyed. Title III concerns the stockyards and provides for the supervision and control of the facilities furnished therein in connection with the receipt, purchase, sale on commission basis or otherwise, of live stock and its care, shipment, weighing, or handling in interstate commerce. A stockyards is defined to be a place conducted for profit as a public market, with pens in which live stock are received and kept for sale or shipment in interstate commerce. Yards with a superficial area less than 20,000 square feet are not within the act. Stockyard owners, commission men, and dealers are recognized and defined, and the two latter are required to register. The act requires that all rates and charges for services and facilities in the stockyards and all practices in connection with the live stock passing through the yards shall be just, reasonable, nondiscriminatory, and nondeceptive, and that a schedule of such charges shall be kept open for public inspection and only be changed after 10 days' notice to the Secretary of Agriculture, who is made a tribunal to inquire as to the justice, reasonableness, and nondiscriminatory or nondeceptive character of every charge and practice, and to order that it cease, if found to offend, with the same provisions for appeal and enforcement in court as in the case of offending packers. The Secretary is given power to make rules and regulations to carry out the provisions, to fix rates or a minimum or maximum thereof, and to prescribe how every packer, stockyard owner, commission man, and dealer shall keep accounts.

The bills aver that the Secretary has given the notice which required appellants to register and has announced proposed rules and regulations, prescribing the form of rate schedules, the required reports, including daily accounts of receipts, sales, and shipments, forbidding misleading reports to depress or enhance prices, prescribing proper feed and care of live stock, and forbidding a commission man to sell live stock to another in whose business he is interested, without disclosing such interest to his principal.

The object to be secured by the act is the free and unburdened flow of live stock from the ranges and farms of the West and the Southwest through the great stockyards and slaughtering centers on the borders of that region, and thence in the form of meat products to the consuming cities of the country in the Middle West and East, or, still as live stock, to the feeding places and fattening farms in the Middle West or East for further preparation for the market.

The chief evil feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper who sells, and unduly and arbitrarily to increase the price to the consumer who buys. Congress thought that the power to maintain this monopoly was aided by control of the stockyards. Another evil which it sought to provide against by the act, was exorbitant charges, duplication of commissions, deceptive practices in respect of prices, in the passage of the live stock through the stockyards, all made possible by collusion between the stockyards management, and the commission men on the one hand, and the packers and dealers on the other. Expenses incurred in the passage through the stockyards necessarily reduce the price received by the shipper, and increase the price to be paid by the consumer. If they be exorbitant or unreasonable, they are an undue burden on the

commerce which the stockyards are intended to facilitate. Any unjust or deceptive practice or combination that unduly and directly enhances them is an unjust obstruction to that commerce. The shipper whose live stock are being cared for and sold in the stockyards market is ordinarily not present at the sale, but is far away in the West. He is wholly dependent on the commission men. The packers and their agents and the dealers who are the buyers, are at the elbow of the commission men, and their relations are constant and close. The control that the packers have had in the stockyards by reason of ownership and constant use, the relation of landlord and tenant between the stockyards owner, on the one hand, and the commission men and the dealers, on the other, the power of assignment of pens and other facilities by that owner to commission men and dealers, all create a situation full of opportunity and temptation to the prejudice of the absent shipper and owner in the neglect of the live stock, in the *mala fides* of the sale, in the exorbitant prices obtained, in the unreasonableness of the charges for services rendered.

The stockyards are not a place of rest or final destination. Thousands of head of live stock arrive daily by carload and trainload lots, and must be promptly sold and disposed of and moved out to give place to the contantly flowing traffic that presses behind. The stockyards are but a throat through which the current flows, and the transactions which occur therein are only incident to this current from the West to the East, and from one State to another. Such transactions can not be separated from the movement to which they contribute and necessarily take on its character. The commission men are essential in making the sales without which the flow of the current would be obstructed, and this, whether they are made to packers or dealers. The dealers are essential to the sales to the stock farmers and feeders. The sales are not in this aspect merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interests in the subject of the current, not interfering with, but, on the contrary, being indispensable to its continuity. The origin of the live stock is in the West, its ultimate destination known to, and intended by, all engaged in the business is in the Middle West and East either as meat products or stock for feeding and fattening. This is the definite and well-understood course of business. The stockyards and the sales are necessary factors in the middle of this current of commerce.

The act, therefore, treats the various stockyards of the country as great national public utilities to promote the flow of commerce from the ranges and farms of the West to the consumers in the East. It assumes that they conduct a business affected by a public use of a national character and subject to national regulation. That it is a business within the power of regulation by legislative action needs no discussion. That has been settled since the case of Munn *v.* Illinois (94 U. S. 113). Nor is there any doubt that in the receipt of live stock by rail and in their delivery by rail the stockyards are an interstate commerce agency. United States *v.* Union Stock Yards Co. (226 U. S. 286). The only question here is whether the business done in the stockyards between the receipt of the live stock in the yards and the shipment of them therefrom is a part of interstate commerce, or is so associated with it as to bring it within the power of national regulation. A similar question has been before this court and had great consideration in Swift *v.* United States (196 U. S. 375). The judgment in that case gives a clear and comprehensive exposition which leaves to us in this case little but the obvious application of the principles there declared.

The Swift case presented to this court the sufficiency of a bill in equity brought against substantially the same packing firms as those against whom this legislation is chiefly directed, charging them as a combination of a dominant proportion of the dealers in fresh meat throughout the United States not to bid against each other in the live-stock markets of the different States, to bid up prices for a few days in order to induce the cattlemen to send their stock to the stockyards, to fix prices at which they would sell, and to that end to restrict shipments of meat when necessary, to establish a uniform credit to dealers, and to keep a black list, to make uniform and improper charges for cartage, and finally to get less than lawful rates from the railroads to the exclusion of competitors, and all this in a conspiracy and single connected scheme to monopolize the supply and distribution of fresh meats throughout the United States. In holding the bill good this court said (p. 396):

"The scheme as a whole seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body, and, for all that we can say, to accomplish it. * * * It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as parts of a single plan. The plan may make the parts unlawful. Aikens *v.* Wisconsin (196 U. S. 194, 206). The statute gives this proceeding against combinations in restraint of commerce among the States and against attempts to monopolize

the same. Intent is almost essential to such a combination and is essential to such an attempt."

Again (pp. 396 and 397):

"Although the combination alleged embraces restraint and monopoly of trade within a single State, its effect upon commerce among the States is not accidental, secondary, remote, or merely probable. * * * Here the subject matter is sales, and the very point of the combination is to restrain and monopolize commerce among the States in respect of such sales."

Again (pp. 398 and 399), in answer to the objection that what was charged did not constitute a case involving commerce among the States, the court said:

"Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one State, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the States, and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another State from that of the seller and of the cattle." * * *

The application of the commerce clause of the Constitution in the Swift case was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another which are ever flowing are in their very essence the commerce among the States and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control. This court declined to defeat this purpose in respect of such a stream and take it out of complete national regulation by a nice and technical inquiry into the noninterstate character of some of its necessary incidents and facilities when considered alone and without reference to their association with the movement of which they were an essential but subordinate part.

The principles of the Swift case have become a fixed rule of this court in the construction and application of the commerce clause. Its latest expression on the subject is found in Lemke *v.* Farmers' Grain Co., decided at this term, February 27, 1922. In that case it was held, on the authority of the Swift case, that the delivery and sale of wheat by farmers to local grain elevators in North Dakota to be shipped to Minneapolis, when practically all the wheat purchased by such elevators was so shipped and the price was fixed by that in the Minneapolis market less profit and freight constituted a course of business and determined the interstate character of the transaction. Accordingly a State statute which sought to regulate the price and profit of such sales and was found to interfere with the free flow of interstate commerce, was declared invalid as a violation of the commerce clause. Similar confirmation of the principle of the Swift case is to be found in Dahnke *v.* Bondurant, in Eureka Pipe Line *v.* Hallanan, and in U. S. Fuel Co. *v.* Hallanan, all decided December 12, 1921; in Western Union Co. *v.* Foster (247 U. S. 105, 113), in United States *v.* Reading (226 U. S. 324, 367, 368); Ohio R. R. Co. *v.* Worthington (225 U. S. 101, 108); Loewe *v.* Lawler (208 U. S. 274, 301).

It is manifest that Congress framed the packers and stockyards act in keeping with the principles announced and applied in the opinion in the Swift case. The recital in section 2, paragraph b of Title I of the act quoted in the margin leaves no doubt of this.[1] The act deals with the same current of business, and the same practical conception of interstate commerce.

Of course, what we are considering here is not a bill in equity or an indictment charging conspiracy to obstruct interstate commerce, but a law. The language of the law shows that what Congress had in mind primarily was to prevent such conspiracies by supervision of the agencies which would be likely to be employed in it. If Congress could provide for punishment or restraint of such conspiracies after their formation through the antitrust law as in the Swift case, certainly it may provide regulation to prevent their formation. The reasonable fear by Congress that such acts, usually

[1] The first title, sec. 2, par. b, provides that "for the purpose of this act a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the live stock and meat packing industries whereby live stock and its products are sent from one State with the expectation that they will end their transit after purchase in another, including, in addition to cases within the general description, all cases whose purchase or sale is either for shipment to another State, or for slaughter of the live stock within the State and the shipment outside of the State of the products resulting from such slaughter. Articles normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of the act."

lawful and affecting only intrastate commerce when considered alone, will probably and more or less constantly be used in conspiracies against interstate commerce or constitute a direct and undue burden on it, expressed in this remedial legislation, serves the same purpose as the intent charged in the Swift indictment to bring acts of a similar character into the current of interstate commerce for Federal restraint. Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly nonexistent.

In United States *v.* Ferger et al. (250 U. S. 199), the validity of an act of Congress punishing forgery and utterance of bills of lading for fictitious shipments in interstate commerce was in question. It was contended that there was and could be no commerce in a fraudulent and fictitious bill of lading, and therefore that the power of Congress could not embrace such pretended bill. In upholding the act, this court, speaking through Chief Justice White, answered the objection by saying:

"But this mistakenly assumes that the power of Congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt with, instead of by relation of that subject to commerce and its effect upon it. We say mistakenly assumes, because we think it clear that if the proposition were sustained, it would destroy the power of Congress to regulate, as obviously that power, if it is to exist, must include the authority to deal with obstructions to interstate commerce (In re Debs, 158 U. S. 564) and with a host of other acts which, because of their relation to and influence upon interstate commerce, come within the power of Congress to regulate, although they are not interstate commerce in and of themselves."

The transportation act of 1920 presents a close analogy to this case. It authorizes supervision by the Interstate Commerce Commission of intrastate commerce where it is so carried on as to work undue, unreasonable advantage or perference in favor of persons or localities in intrastate commerce, as against those in interstate commerce, or any undue, unjust, or unreasonable discrimination against interstate commerce itself. Railroad Commission *v.* Chicago, Burlington & Quincy Railroad Company, decided February 27, 1922. That case followed the Minnesota Rate cases (230 U. S. 352, 432, 433); the Shreveport case (234 U. S. 342, 351); Illinois Central R. R. Co. *v.* Public Utilities Commission (245 U. S. 493); B. & O. Ry. Co. *v.* Interstate Commerce Commission (221 U. S. 612, 618); Southern Ry. Co. *v.* United States (222 U. S. 20, 26, 27); Second Employers Liability case (223 U. S. 1, 48, 51). The principle of these cases is thus clearly stated by the court in Minnesota Rate cases (p. 399):

"The authority of Congress extends to every part of interstate commerce and to every instrumentality and agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere."

In section 311 of the act quoted in the margin,[2] Congress gives to the Secretary of Agriculture in respect to intrastate transactions that affect prejudicially interstate commerce under his protection the same powers given to the Interstate Commerce Commission in respect to intrastate commerce which affects prejudicially interstate railroad commerce in paragraph 4, section 13, as amended in section 416 of the transportation act of 1920. This was the paragraph and section which were enforced in Railroad Commission *v.* Chicago, Burlington & Quincy Railroad Company, supra, and the validity of which was upheld by this court.

[2] Section 311 is as follows:

"Whenever in any investigation under the provisions of this title or in any investigation instituted by petition of the stockyard owner or market agency concerned, which petition is hereby authorized to be filed, the Secretary after full hearing finds that any rate, charge, regulation, or practice of any stockyard owner or market agency for or in connection with the buying or selling on a commission basis or otherwise, receiving, marketing, feeding, holding, delivery, shipment, weighing, or handling, not in commerce, of live stock, causes any undue or unreasonable advantage or preference as between persons or localities in intrastate commerce in live stock on the one hand, and interstate or foreign commerce in live stock on the other hand, or any undue, unjust, or unreasonable discrimination against interstate or foreign commerce which is hereby forbidden and declared to be unlawful, the Secretary shall prescribe the rate, charge, regulation, or practice thereafter to be observed in such manner as in his judgment will remove such advantage, preference, or discrimination. Such rates, charges, regulations, or practices shall be observed while in effect by the stockyard owners or market agencies, parties to such proceeding affected thereby, the law of any State or the decision of any State authority to the contrary notwithstanding."

Counsel for appellants cite cases to show that transactions like those of the commission men or dealers here are not interstate commerce or within the power of Congress to regulate. The chief of these are Hopkins *v.* United States (171 U. S. 604) and Anderson *v.* United States (171 U. S. 604). These cases were considered in the Swift case and disposed of by the court as follows (p. 397):

"So again, the line is distinct between this case and Hopkins *v.* United States (171 U. S. 578). All that was decided there was that the local business of commission merchants was not commerce among the States, even if what the brokers were employed to sell was an object of such commerce. The brokers were not like the defendants before us, themselves the buyers and sellers. They only furnish facilities for sales. Therefore, there again the effects of the combination of brokers upon the commerce was only indirect and not within the act. Whether the case would have been different if the combination had resulted in exorbitant charges was left open. In Anderson *v.* United States (171 U. S. 604) the defendants were buyers and sellers at the stockyards but their agreement was merely not to employ brokers or to recognize yard traders who were not members of their association. Any yard trader could become a member of the association on complying with the conditions and there was said to be no feature of monopoly in the case. It was held that the combination did not directly regulate commerce between the States and being formed with a different intent, was not within the act. The present case is more like Montague & Co. *v.* Lowry (193 U. S. 38)."

It is clear from this that if the bill in the Swift case had averred that control of the stockyards and the commission men was one of the means used by the packers to make arbitrary prices in their plan of monopolizing the interstate commerce, the acts of the stockyards owners and commission men would have been regarded as directly affecting interstate commerce and within the antitrust act. Congress has found as an evil to be apprehended and to be prevented by the act here in question, in the use and control of stockyards and the commission men to promote a packers' monopoly of interstate commerce. The act finds and imports this injurious direct effect of such agencies upon interstate commerce just as the intent of the conspiracy charged in the indictment in the Swift case tied together the parts of the scheme there attacked and imported their direct effect upon interstate commerce.

Again, if the result of the combination of commission men in the Hopkins case had been to impose exorbitant charges on the passage of the live stock through the stockyards from one State to another, the case would have been different, as the court suggests. The effect on interstate commerce in such a case would have been direct. Similarly in the Anderson case if the combination of dealers had been directed to collusion with the commission men to secure sales at unduly low prices to the dealers and to double commissions, or to practice any other fraud or oppression calculated to decrease the price received by the shipper and increase the price to the purchaser in the passage of live stock through the stockyards in interstate commerce, this would have been a direct burden on such commerce and within the antitrust act.

The other cases relied on by appellants are less relevant to this discussion than the Anderson and Hopkins cases. Some of them are tax cases. As to them it is well to bear in mind the words of the court in the Swift case (p. 400):

"But we do not mean to imply that the rule which marks the point at which State taxation or regulation becomes permissible necessarily is beyond the scope of interference by Congress where such interference is deemed necessary for the protection of commerce among the States."

Thus, take the case of Bacon *v.* Illinois (227 U. S. 504). Bacon had purchased grain in transit from a western State to the East. He exercised the power under his contract to stop the grain in Illinois and put it in a grain elevator there. He intended to send it on to some other State for sale. He might have changed his mind. He did, however, after a time, send it out of the State. The grain was taxed while it was in Illinois. The question was whether it was immune from taxation because in transit in interstate commerce. Following the cases of Woodruff *v.* Parham (8 Wall. 123); Coe *v.* Errol (116 U. S. 517); Brown *v.* Houston (114 U. S. 622); Pittsburg & Southern Coal Co. *v.* Bates (156 U. S. 577); Diamond Match Co. *v.* Ontonagon (188 U. S. 82, 93, 96); Kelley *v.* Rhodes (188 U. S. 1, 5, 7); General Oil Co. *v.* Crain (209 U. S. 211); and American Steel & Wire Co. *v.* Speed (192 U. S. 500), it was held that property in a State which its owner intends to transport to some other State, but which is not in actual transit and in respect to the disposition of which he may change his mind is not in interstate commerce just because of the intention of its owner, and may, therefore, be taxed by the State where it is. The court brought out the distinction between such cases and this in the remark (p. 516):

"The question, it should be observed, is not with respect to the extent of the power of Congress to regulate interstate commerce, but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with this paramount authority."

Moreover, it will be noted that even in tax cases where the tax is directed against a commodity in an actual flowing and constant stream out of a State from which the owner may withdraw part of it for use or sale in the State before it reaches the State border, we have held that a tax on the flow is a burden on interstate commerce which the State may not impose because such flow in interstate commerce is an established course of business. (United Fuel Gas Co. *v.* Hallanan, decided December 12, 1921; the Eureka Pipe Line Company *v.* Hallanan et al., decided December 12, 1921.) In the former, the court summed up as follows:

"In short, the great body of the gas starts for points outside the State and goes to them. That the necessity of business require a much smaller amount destined to points within the State to be carried undistinguished in the same pipes does not affect the character of the major transportation. Neither is the case as to the gas sold to the three companies changed by the fact that the plaintiff as owner of the gas, and the purchasers after they receive it might change their minds before the gas leaves the State and that the precise proportions between local and outside deliveries may not have been fixed, although they seem to have been. The typical and actual course of events marks the carriage of the greater part as commerce among the States, and theoretical possibilities may be left out of account. There is no break, no period of deliberation, but a steady flow ending as contemplated from the beginning beyond the State line. (Ohio R. R. Commission *v.* Worthington, 225 U. S. 101, 108; United States *v.* Reading Co., 226 U. S. 324, 367; Western Union Telegraph Co. *v.* Foster, 247 U. S. 105, 113.)"

The case of Blumenstock *v.* Curtis (252 U. S. 436) is easily distinguished from the one at the bar. There it was merely held that an attempt of a publisher to monopolize the business of publishing advertising matter in magazines resulting in refusal of such publisher to accept advertisements in his magazines was too remote in its relation to the interstate commerce of circulating magazines. The court said:

"This case is wholly unlike International Text Book *v.* Pigg (217 U. S. 91) wherein there was a continuous interstate traffic in textbooks and apparatus for a course of study pursued by means of correspondence, and the movements in interstate commerce were held to bring the subject matter within the domain of Federal control and to exempt it from the burden imposed by State legislation."

Pennsylvania R. R. Co. *v.* Knight (192 U. S. 21), relied on by counsel for appellants and said to be exactly applicable to the case at bar, was an effort by the Pennsylvania Railroad Co. to secure immunity from city regulation for a cab system which it ran in New York to and from its station to points in New York City, on the ground that it was part of interstate commerce. This court held that because it was independent of the railroad transportation, and not included in the contract of railroad carriage, it did not come within interstate commerce. The case was distinguished in the Swift case (p. 401) from cartage for delivery of the goods when part of the contemplated transit. There is nothing in the case to indicate that if such an agency could be and were used in a conspiracy unduly and constantly to monopolize interstate passenger traffic, it might not be brought within Federal restraint.

As already noted, the word "commerce," when used in the act, is defined to be interstate and foreign commerce. Its provisions are carefully drawn to apply only to those practices and obstructions which in the judgment of Congress are likely to affect interstate commerce prejudicially. Thus construed and applied, we think the act clearly within congressional power and valid.

Other objections are made to the act and its provisions as violative of other limitations of the Constitution, but the only one seriously pressed was that based on the commerce clause and we do not deem it necessary to discuss the others.

The orders of the district court refusing the interlocutory injunctions are affirmed.

Mr. Justice McReynolds dissents.

Mr. Justice Day did not sit in these cases and took no part in their decision.

Mr. MORRILL. I want to say that the raising of this objection in the South St. Paul yard is not altogether the seeking of the Secretary of Agriculture. In other words, just as has been said, whether the right of the State officials and others to complain to the Secretary of Agriculture can be exercised by people outside of the State just as well as by people inside of the State. And, as I said in my statement the other day, the market department of the State of South Dakota first complained about this matter and did so under the section which authorized them to make a complaint, and the question was whether we have power over these rates. And it was insisted by the State that their weighers should be allowed to remain in there and that they

should have the right to collect this weighing charge, because their State law authorized them to do so. If their law was valid there was nothing that we could do about it. But counsel held that it was not valid, because it covered the field of the packers and stockyards act and was in conflict with it as being a regulation of interstate commerce.

Mr. JONES. That pretty near settles that feature of it. But now could you establish under this act, or are you authorized to do so—I have not read it carefully with that idea in mind—national weighers there and authorize them to make a charge sufficient to cover the cost so that there would not be a drain on the National Treasury in that regard? Are you given that authority?

Mr. MORRILL. That, as I said, is a question that I am not prepared to answer.

Mr. JONES. Yes.

Mr. MORRILL. And I will say that frankly—and I am not withholding anything—I am not prepared to answer that question, because so far we have looked upon this law as a supervision law, and as one that should be carried on by supervision measures until those measures fail.

Mr. TINCHER. Have you any question, Mr. Morrill, in your mind now, in your judgment, as to whether or not you will be able to absolutely prevent any fraud in weighing by supervision?

Mr. MORRILL. I have no question at all in my mind about that, by supervision methods.

Mr. TINCHER. Now, have you any question in your mind as to whether or not you will be able to cure the evils of irresponsible commission men beating the producer out of the price of his live stock, by proper regulation?

Mr. MORRILL. I do not think we have any less authority than the State of Minnesota has claimed to have on that subject.

Mr. JONES. Well, you think it will be ultimately necessary to require a bond even though you have the other?

Mr. MORRILL. I think that is quite likely.

Mr. THOMPSON. Under what section of your law would you be able to require a bond?

Mr. MORRILL. It does not need the word.

Mr. JONES. He has got the authority.

Mr. TINCHER. He can make a commission company by regulation put up a cash deposit if he wants to.

Mr. MORRILL. This law works two ways. It says in the first place:

"It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard."

Now bear in mind the definition of "stockyard services:"

"The term 'stockyard services' means services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce."

Now that operates directly on him. Then it goes on and says:

"It shall be the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services, and every unjust, unreasonable, or discriminatory regulation or practice is prohibited and declared to be unlawful."

Then it goes along still further and says that——

Mr. JONES (interposing). Well, somewhere in there it authorizes the Secretary of Agriculture to prescribe all such rules and regulations as are necessary to accomplish such purposes.

Mr. MORRILL. I want to get the whole thing before you, because there has been some question about it:

"SEC. 310. Whenever after full hearing upon a complaint made as provided in section 309, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary"—

It covers a great deal of territory in those words—

"(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or mini-

mum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed."

Mr. TINCHER. Well, based on that you have been down in Kansas City and had hearings and gone into the matter with the view of making orders and regulations to take care of these matters.

Mr. MORRILL. Yes, and representatives of the States of Kansas and Missouri intervened, and were given the privilege of examination and cross-examination of witnesses and the filing of briefs and everything else that they wanted to do by way of participation in the case.

Mr. TINCHER. And Texas was there too.

Mr. WELLS. Would it be necessary in every case to file a complaint with your department to get any action?

Mr. MORRILL. No; we are trying to minimize the filing of formal complaints; trying to handle these cmoplaints, so far as possible, by direct action.

Mr. JONES. It says the Secretary may, "on his own initiative."

Mr. WELLS. At St. Louis you held a hearing recently in regard to the open market.

Mr. MORRILL. Yes.

Mr. WELLS. And you made an order there, as I understand it, requiring those people to have an open market, and forbidding them to use the rule of not dealing with nonmembers.

Mr. MORRILL. Yes.

Mr. WELLS. Is it not a fact that every yard in the United States today that has an exchange has that same rule?

Mr. MORRILL. There are a half a dozen yards that have exchanges that have that same rule, but as a result of that St. Louis hearing every one of them is going to modify its rule before we get through.

Mr. WELLS. South St. Paul had that rule until the State law was passed making it an open market. Judge Michaels held that the law is valid, and they took an appeal to the Supreme Court, where it is now pending awaiting final decision. It has been argued.

Mr. MORRILL. May I say right there——

Mr. WELLS. Pardon me a moment. Now, that boycott is on to-day just the same as it ever was, although Judge Michaels gave a restraining order, but no member will deal with the Equity, or the Cooperative Central Selling Association.

Mr. MORRILL. Now, Mr. Wells, will you as a State representative undertake to cooperate with the Secretary of Agriculture by furnishing him evidence to prove that condition and to make an order?

Mr. WELLS. Yes; that is the reason I asked you if it was necessary. That is the reason I asked you.

Mr. MORRILL. That is all that is necessary.

Now, I mentioned the complaint of the department of markets of the State of South Dakota.

Under date of May 2, 1922, Senator Walsh wrote me as follows:

"I am inclosing copy of resolutions adopted by the Montana Stock Growers' Association protesting against the action of the Minnesota State Railroad and Warehouse Commission in assessing a charge for weighing in the case of live stock going to the South St. Paul market. Will you kindly advise me as to your attitude in relation to action of that character on the part of State authorities?

"Very truly yours,

"T. J. WALSH."

And the resolution reads as follows:

"RESOLUTION OF MONTANA STOCK GROWERS' ASSOCIATION AT BUTTE, MONT., APRIL 18 AND 19, 1922.

"Whereas the Minnesota State Railroad and Warehouse Commission assesses a weighing charge at South St. Paul market of 2 cents per head on cattle, 1½ cents per head on hogs, and 1 cent per head on sheep, which weighing charge is not assessed at other markets; and

"Whereas Federal supervision under the stockyards and packers' control act furnished adequate protection to shippers, this charge works an additional and unnecessary market expense: Therefore be it

Resolved, The members of the Montana Stockgrowers Association, assembled at Butte, earnestly and urgently protest against such charges and petition the Secretary of Agriculture to use his influence against any State legislation which works a marketing hardship against the live-stock industry of Montana."

Now bear in mind that I do not take the view that this weighing charge, if absorbed by the Stockyards Co., will not be collected from the shipper, to the extent that the actual cost thereof is borne by the Stockyards Co., but there is quite a difference between a charge which is more than the actual cost, and one which is only the actual cost.

Now, I have read that resolution. I have also received letters from other States raising the question as to what we are going to do about South St. Paul, and I quite readily appreciate, and it has been indicated here, that there are two sides to all these matters. The Secretary of Agriculture has not been given an opportunity to work out a policy for the stockyards with respect to weighing services, because his hands have been absolutely tied by litigation not only in the Supreme Court of the United States, but in the State of Minnesota, litigation which was not instituted by the Secretary of Agriculture in any instance.

Mr. BOWEN. He is not a party to that litigation in any way.

Mr. MORRILL. No, he can not control it.

Mr. TINCHER. Well, put such of those communications as you desire into the record.

Mr. MORRILL. Yes, I have here a batch of copies of papers which, with the permission of the chairman, I will file, which include the various complaints that we have received. They include the complaint of the South St. Paul Stock Exchange. They include the opinion by Judge Hainer that has been mentioned here, and the letter of the Attorney General with respect to that opinion, and my own expression upon it, and they include a letter from the Secretary of Agriculture about the matter, and a number of letters, incidental correspondence about this weighing charge. I will put them in the record.

The CHAIRMAN. Without objection it will be so ordered.

(The various papers presented by Mr. Morrill are here printed in the record in full, as follows:)

Hon. HENRY C. WALLACE,
Secretary of Agriculture, Washington, D. C.

DEAR SIR: On January 1, 1920, the Railroad and Warehouse Commission of the State of Minnesota assumed control of the weighing of live stock at the South St. Paul market under a certain State law passed by the Minnesota Legislature in December, 1919, and up to March 28, 1922, it has cost the live-stock shippers and producers of the State of Wisconsin the enormous sum of $13,203.37, placing this additional burden on the live-stock producers of our State on interstate shipments, whereas no such charge is made on live stock shipped to the Chicago market or any other market in the United States. Prior to the enactment of this Minnesota State law the weighing service was performed free by the St. Paul Union Stock Yards Co. at South St. Paul, Minn., in a very satisfactory manner. This places an additional burden on the live-stock producers and shippers in the territory tributary to the South St. Paul market without any additional benefits and with no more accurate weights than those furnished by the Stock Yards Co.

I understand that the rules and regulations promulgated by your department under the authority vested in you by the packers act provides that the weighing of live stock at South St. Paul be performed by the St. Paul Union Stock Yards Co. free of charge, and I am satisfied that this service performed by the Stock Yards Co. under your jurisdiction will be just as satisfactory if not more so than the service now being performed by the State of Minnesota.

I have conferred with a large number of shippers from our State and they are all extremely anxious to be relieved of this extra burden. We therefore urge that your regulations under the packer act be put into effect at once.

Yours very respectfully,

HERMAN FRIESS.

APRIL 14, 1922.

Mr. HERMAN FRIESS, *Rice Lake, Wis.*

DEAR MR. FRIESS: This is to acknowledge receipt of your letter, without date, addressed to the Secretary of Agriculture, in regard to weighing charges exacted by the Railroad and Warehouse Commission of the State of Minnesota at the South St. Paul live-stock market, in which you urge that the rules and regulations under the packers and stockyards act be put into effect at once.

This matter was considered some time ago by the packers and stockyards administration and the Stockyards Co. prepared to take over the weighing service at the St. Paul market and to absorb the costs thereof in its regular yardage charges without making any special weighing charge to shippers, in accordance with the decision

rendered by the packers and stockyards administration. However, the railroad and warehouse commission applied for and obtained a temporary restraining order in a State court of Minnesota, and the case is now pending. Shortly thereafter the commission men at South St. Paul instituted suit in the Federal court to enjoin the State from enforcing its weighing, licensing, bonding, and other requirements, and this case also is now pending, undecided.

Following this, bills were introduced in Congress, one of which is S. 3298, by Senator Kellogg, to amend the packers and stockyards act so that it shall not be construed to prevent any State from appointing and paying weighers of live stock in commerce, or to test or operate the scales upon which such weighing is done, or to prevent any State from collecting from the person for whom such weighing is done a fee not to exceed 2 cents per head for cattle and 1 cent per head for swine, sheep, and goats, together with certain other limitations upon the enforcement of the packers and stockyards act. This bill is under consideration by the Senate Committee of Agriculture and Forestry,

Very truly yours,

CHESTER MORRILL,
Assistant to the Secretary.

NELSON, WIS., *April 1, 1922.*

Hon. HENRY C. WALLACE,
Secretary of Agriculture, Washington, D. C.

DEAR SIR: On January 1, 1920, the Railroad and Warehouse Commission of the State of Minnesota assumed control of the weighing of live stock at the South St. Paul market under a certain State law passed by the Minnesota Legislature in December, 1919, and up to March 28, 1922, it has cost the live-stock shippers and producers of the State of Wisconsin the enormous sum of $13,203.37, placing this additional burden on the live-stock producers of our State on interstate shipments, whereas no such charge is made on live stock shipped to the Chicago market or any other market in the United States. Prior to the enactment of this Minnesota State law the weighing service was performed free by the St. Paul Union Stock Yards Co. at South St. Paul, Minn., in a very satisfactory manner. This places an additional burden on the live-stock producers and shippers in the territory tributary to the South St. Paul market without any additional benefits and with no more accurate weights than those furnished by the Stock Yards Co.

I understand that the rules and regulations promulgated by your department under the authority vested in you by the packers act provides that the weighing of live stock at South St. Paul be performed by the St. Paul Union Stock Yards Co. free of charge, and I am satisfied that this service performed by the Stock Yards Co. under your jurisdiction will be just as satisfactory if not more so than the service now being performed by the State of Minnesota.

I have conferred with a large number of shippers from our State and they are all extremely anxious to be relieved of this extra burden. We therefore urge that your Regulations under the packer act be put into effect at once.

Yours very respectfully,

MATSON WALKER.

APRIL 5, 1922.

Mr. MATSON WALKER, *Nelson, Wis.*

DEAR MR. WALKER: I have your letter of April 1 in regard to the weighing charges exacted by the Railroad and Warehouse Commission of the State of Minnesota at South St. Paul and the amount thereof paid by the shippers of the State of Wisconsin.

This subject was taken up with the Secretary of Agriculture with respect to the shippers of the State of South Dakota by the marketing department of that State, and, as a result, this department took the position indicated in the attached copy of an opinion by the attorney of the packers and stockyards administration. Since then the stockyards company prepared to take over the weighing service at South St. Paul and to absorb the costs thereof in its regular yardage charges without making any special weighing charge to shippers, but the railroad and warehouse commission applied for and obtained a temporary restraining order in a State court of Minnesota, and the case is now pending. Shortly thereafter, the commission men at South St. Paul instituted suit in the Federal court to enjoin the State from enforcing its weighing, licensing, bonding, and other requirements, and this case also is now pending, undecided.

Following this, bills were introduced in Congress, one of which is S. 3298, by Senator Kellogg, to amend the packers and stockyards act so that it shall not be construed to prevent any State from appointing and paying weighers of live stock in commerce, or to test or operate the scales upon which such weighing is done, or to prevent any State from collecting from the person for whom such weighing is done a fee not to exceed 2 cents per head for cattle and 1 cent per head for swine, sheep, and goats, together with certain other limitations upon the enforcement of the packers and stockyards act. This bill is under consideration by the Senate Committee of Agriculture and Forestry.

Very truly yours,

CHESTER MORRILL,
Assistant to the Secretary.

BUFFALO, N. DAK., *April 6, 1922.*

Hon. HENRY C. WALLACE,
Secretary of Agriculture, Washington, D. C.

DEAR SIR: I have been shipping in and feeding and also raising live stock at Buffalo N. Dak., for the past 15 years and shipping same to the South St. Paul markets.

Since about January 1, 1920, I have been compelled to pay for weighing service at South St. Paul. Prior to that time, there was no charge made.

I deem this an expense that is absolutely unnecessary, as I was just as well satisfied with the wieghts when done by the Stockyards' Co. as I am since it was done by the Railroad Commission of the State of Minnesota.

It appears to me it is putting a burden on the farmers and shippers wholly for the purpose of making soft jobs for political vote getters.

Our Government from the head down is loaded with these unnecessary barnacles, and unless there is stripping done, and the ship cleaned up some, it will sink.

I, therefore, urge upon you that the regulations under the packers' act be put into effect without delay in order to relieve us of this unnecessary burden.

Yours truly,

W. S. SPROUL.

APRIL 14, 1922.

Mr. W. L. SPROUL, *Buffalo, N. Dak.*

DEAR SIR: I have your letter of April 6, addressed to the secretary, and you may be assured that the packers and stockyards administration has in mind the point of view expressed by you in regard to the weighing charges at South St. Paul. This question was brought up by the State Marketing Department of South Dakota and by the commission men and Stockyards Co. at South St. Paul last fall. It resulted in a hearing at South St. Paul in which it appeared that the State railroad and warehouse commission intended to insist upon retaining the weighing service at St. Paul and the supervision of it.

The matter was considered by the attorney of this administration, who held that the packers and stockyards act supersedes the State law with respect to interstate commerce, and this opinion was approved by the Attorney General of the United States. Following this opinion, it was informally decided by the stockyards company that it would be willing to resume the weighing of live stock and absorb the expense thereof in its existing charges so that the extra weighing charge would be discontinued.

However, the State brought suit against the Stockyards Co. to enjoin the Stockyards Co. from resuming the weighing service, and the application for injunction has been heard in the State court but has not been decided. Following the institution of this suit, the commission men and others operating in the yards brought suit against the State railroad and warehouse commission to enjoin it from enforcing its requirements. This suit was brought in the Federal Court, and is also pending, undecided. Since then, bills have been introduced in the House and Senate to amend the packers and stockyards act so as to restore to the State railroad and warehouse commission the right to continue this weighing service and make the charge heretofore made as well as to make certain requirements of the commission men.

In the meantime, a supervisor of the packers and stockyards administration has been placed in the St. Paul yards and a detailed audit of the accounts of the agencies operating in the yards has been instituted.

So far as this administration is concerned, it has been doing everything within its power to carry out the mandatory provisions of the law.

Very truly yours,

CHESTER MORRILL,
Assistant to the Secretary.

INTERSTATE BANK OF BILLINGS COUNTY,
Sentinel Butte, N. Dak., April 1, 1922.

Hon. H. C. WALLACE,
Secretary of Agriculture, Washington, D. C.

DEAR SIR: I have been a producer and shipper of live stock to the South St. Paul and Chicago markets from the State of North Dakota since the year 1894 and up to about January 1, 1920, the weighing service at South St. Paul was performed free of charge and in a very satisfactory manner by the St. Paul Union Stock Yards Co. I find, however, on investigation that since about the 1st of January, 1920, the weighing service at South St. Paul has been performed by the State of Minnesota, making a charge for such service, which is paid by the producers and shippers of live stock to that market, and since the service was taken over by the State of Minnesota, it has cost the shippers and producers from the State of North Dakota alone the enormous sum of $19,300.21. The total expense from all States shipping into South St. Paul for the State weighing service will run from $75,000 to $100,000 per year, placing an extra burden on live-stock producers tributary to South St. Paul.

All business shipped to and from South St. Paul, except a small portion of Minnesota shipments, is interstate business, and I do not believe the railroad and warehouse commission of Minnesota should be permitted to exercise any jurisdiction or control over this business, in view of the fact that the packers act gives your department full control over such interstate business, and for the benefit of the live-stock producers in this territory I would respectfully urge that the regulations under the packers act be put in effect without delay in order to relieve us of this unnecessary burden.

Very sincerely yours,

A. L. MARTIN, *President.*

Copy to Hon. P. J. McCumber.

INTERSTATE BANK OF BILLINGS COUNTY,
Sentinel Butte, N. Dak., April 1, 1922.

Hon. P. J. MCCUMBER,
Washington, D. C.

MY DEAR SENATOR: I am inclosing copy of letter which I am to-day mailing Secretary of Agriculture Wallace. The purport of this you will understand. I would thank you very much if you would take this matter up with the Secretary and urge that the packers act be put in effect at once at least, so far as it pertains to the weighing of our live stock. We all know the burdens our agriculturists have been up against the past few years and anything that will save them a dollar should be done.

I have produced and shipped live stock to the markets for nearly 30 years now from North Dakota and it seems every year there is some new scheme sprung to make our burdens heavier and many of them have no merit and look to me as though their only purpose was to give some political friend a job. I shall thank you for anything you may be able to do, I beg to remain.

Very sincerely yours,

A. L. MARTIN, *President.*

UNITED STATES SENATE, *April 12, 1922.*

Hon. HENRY C. WALLACE,
Secretary of Agriculture, Washington, D. C.

MY DEAR MR. SECRETARY: I beg to inclose herewith letter from Hon. A. L. Martin, of Sentinel Butte, N. Dak., together with copy of his letter of April 1 to you in relation to the matter of having the packers put into effect at once the weighing of live stock.

Mr. Martin, who has been one of our State senators for a number of years, is a large live-stock grower and is thoroughly conversant with the matter. I am glad to join with him in the recommendation made.

I wish you would write me a letter in the matter that I could transmit to him, returning the inclosures with your reply.

Sincerely yours,

P. J. MCCUMBER.

APRIL 14, 1922.

MR. A. L. MARTIN,
President Interstate Bank of Billings County,
Sentinel Butte, N. Dak.

DEAR MR. MARTIN: I have your letter of April 1 in regard to the weighing charges exacted by the railroad and warehouse commission of the State of Minnesota at South St. Paul and the amount thereof paid by the shippers of the State of North Dakota.

This subject was taken up with the Secretary of Agriculture with respect to the shippers of the State of South Dakota by the marketing department of that State, and, as a result, this department took the position indicated in the attached copy of an opinion by the attorney of the packers and stockyards administration. Since then the stockyards company prepared to take over the weighing service at South St. Paul and to absorb the costs thereof in its regular yardage charges without making any special weighing charge to shippers, but the railroad and warehouse commission applied for and obtained a temporary restraining order in a State court of Minnesota, and the case is now pending. Shortly thereafter, the commission men at South St. Paul instituted suit in the Federal court to enjoin the State from enforcing its weighing, licensing, bonding, and other requirements, and this case also is now pending, undecided.

Following this, bills were introduced in Congress, one of which is S. 3298, by Senator Kellogg, to amend the packers and stockyards act so that it shall not be construed to prevent any State from appointing and paying weighers of live stock in commerce, or to test or operate the scales upon which such weighing is done, or to prevent any State from collecting from the person for whom such weighing is done a fee not to exceed 2 cents per head for cattle and 1 cent per head for swine, sheep, and goats, together with certain other limitations upon the enforcement of the packers and stockyards act. This bill is under consideration by the Senate Committee of Agriculture and Forestry.

Very truly yours,

———— ————,
Assistant to the Secretary.

APRIL 18, 1922.

Hon. P. J. MCCUMBER,
United States Senate.

DEAR SENATOR MCCUMBER: I have your letter of April 12, inclosing a letter from Mr. A. L. Martin, of Sentinel Butte, N. Dak., and a copy of a letter dated April 1 which he wrote to me regarding the weighing charges exacted by the railroad and warehouse commission of the State of Minnesota at the South St. Paul live-stock market.

Mr. Martin's letter to me of April 1 was referred to the packers and stockyards administration for reply, and I understand that he has been furnished full information as to the present status of the situation referred to. This is about as follows:

Through the marketing department of the State of South Dakota the shippers of that State took this matter up with this department and we took the position indicated in the attached copy of opinion by the attorney of the packers and stockyards administration. After this opinion was rendered the South St. Paul Stockyards Co. prepared to take over the weighing service at that market and to absorb the costs thereof in its regular yardage charges without making any special weighing charge to shippers. The railroad and warehouse commission applied for and obtained a temporary restraining order in a State court of Minnesota, which case is now pending. Shortly thereafter the commission men at South at South St. Paul instituted suit in the Federal court to enjoin the State from enforcing its weighing, licensing, bonding, and other requirements, and this case also is now pending, undecided.

You probably are familiar with bills which have been recently introduced in Congress, one of which is S. 3298, by Senator Kellogg, to amend the packers and stockyards act so that it shall not be construed to prevent any State from appointing and paying weighers of live stock in commerce, or to test or operate the scales upon which such weighing is done, or to prevent any State from collecting from the person for whom such weighing is done a fee not to exceed 2 cents per head for cattle and 1 cent per head for swine, sheep, and goats, together with certain other limitations upon the enforcement of the packers and stockyards act. This bill is under consideration by the Senate Committee of Agriculture and Forestry.

In accordance with your request, the inclosures with your letter are returned herewith, and if we can be of further service to you please advise.

Very truly yours,

HENRY C. WALLACE, *Secretary.*

CHAFFEE, N. DAK., *April 11, 1922.*

Hon. HENRY C. WALLACE,
Secretary of Agriculture, Washington, D. C.

DEAR SIR: I have been producing and shipping live stock from the State of North Dakota to the South St. Paul and Chicago markets for the last 10 years, and up to about January 1, 1920, the weighing service at South St. Paul was performed free of charge in a very satisfactory manner by the St. Paul Union Stock Yards Co.

I find, however, on investigation that since about the 1st of January, 1920, the weighing service at South St. Paul has been performed by the State of Minnesota, making a charge for such service, which is paid by the producers and shippers of live stock to that market, and since the service was taken over by the State of Minnesota, it has cost the shippers and producers from the State of North Dakota alone the enormous sum of $19,303. The total expense service will run from $70,000 to $100,000 per year, placing this extra burden on live-stock producers in territory tributary to South St. Paul.

The greater part of all shipping to and from South St. Paul is interstate business, and I don't believe the Railroad and Warehouse Commission of Minnesota should be permitted to exercise any jurisdiction or control over this business in view of the fact that the packers act gives your department full control of such interstate business. For the benefit of the live-stock producers in this territory I would respectfully urge that the regulations under the packers act be put into effect without delay in order to relieve us of this unnecessary burden.

Yours very truly,

J. F. MARTIN.

APRIL 15, 1922.

Mr. J. F. MARTIN, *Choffee, N. Dak.*

DEAR MR. MARTIN: This is to acknowledge receipt of your letter of April 11, in regard to weighing charges exacted by the Railroad and Warehouse Commission of the State of Minnesota at the South St. Paul live-stock market, in which you urge that the rules and regulations under the packers and stockyards act be put into effect at once.

This matter was considered some time ago by the packers and stockyards administration and the Stockyards Co. prepared to take over the weighing service at the St. Paul market and to absorb the costs thereof in its regular yardage charges without making any special weighing charge to shippers, in accordance with the decision rendered by the packers and stockyards administration. However, the railroad and warehouse commission applied for and obtained a temporary restraining order in a State court of Minnesota, and the case is now pending. Shortly thereafter the commission men at South St. Paul instituted suit in the Federal court to enjoin the State from enforcing its weighing, licensing, bonding, and other requirements, and this case also is now pending undecided.

Following this, bills were introduced in Congress, one of which is S. 3298, by Senator Kellogg, to amend the packers and stockyards act so that it shall not be construed to prevent any State from appointing and paying weighers of live stock in commerce, or to test or operate the scales upon which such weighing is done, or to prevent any State from collecting from the person for whom such weighing is done a fee not to exceed 2 cents per head for cattle and 1 cent per head for swine, sheep, and goats, together with certain other limitations upon the enforcement of the packers and stockyards act. This bill is under consideration by the Senate Committee of Agriculture and Forestry.

Very truly yours,

CHESTER MORRILL, *Assistant to the Secretary.*

ST. PAUL, *February 8, 1922.*

Hon. HENRY WALLACE,
Secretary of Agriculture, Washington, D. C.

DEAR SIR: The Federal supervisor at South St. Paul has to-day advised the exchange, the commission men, and the Stockyards Co., and also the railroad and warehouse commission, by exhibiting to the latter a copy of your telegram of February 7, that the Attorney General of the United States has ruled that there is no such thing as divided control, affirming generally the opinion of Judge Hainer, and the effect of it all is that the State can no longer weigh at South St. Paul and make a charge therefor.

In informal conference with the railroad and warehouse commission to-day, it was indicated that the Federal jurisdiction would be resisted and the State would continue to weigh, and exact a charge therefor, and it was even ventured that the militia would be called into service.

It is quite unbearable that our clients should longer be subjected to the collection of weighing charges in order to support of the State department, and some action must be taken at once to declare the supremacy of your own jurisdiction under the packers and stockyards act. Our thought is an appropriate action should be started in

the Federal court, and we think your department should take the laboring oar, and the action should be brought in your own behalf.

Our suggestion is that Judge Hainer come on to St. Paul and be here Monday or Tuesday of next week, and we will prepare together the necessary bill of complaint sued out in the Federal court to restrain the enforcement of the State laws as in conflict with the Federal act.

Very truly yours,

MOORE, OPPENHEIMER, PETERSON & DICKSON.
By GEO. W. PETERSON.

SWIFT & CO.,
UNION STOCK YARDS,
Chicago, January 11, 1922.

DEAR MR. SECRETARY: Your communication of January 4 and accompanying opinion of Judge Hainer, respecting the St. Paul situation, is acknowledged with appreciation.

I agree with your conclusions regarding another hearing. It is quite unlikely that anything constructive would result.

The St. Paul Stock Yards Co. has recognized the jurisdiction of your department by promptly filing a schedule of rates and charges for stockyards service. It stands ready to function in all respects under the rules and regulations of the "packers and stockyards administration" and only awaits advice from your department concerning procedure.

Yours very truly,

F. S. BROOKS.

Mr. HENRY WALLACE,
Department of Agriculture, Washington, D. C.

ST. PAUL UNION STOCKYARDS CO.,
South St. Paul, Minn., January 9, 1922.

DEAR MR. SECRETARY: Thank you very much for your letter of January 4, inclosing copy of Mr. Morrill's letter to you and a copy of Judge Hainer's opinion on the question of Federal versus State control.

Do not believe we have any suggestions to make except that we should have definite instructions from the department as to what procedure is to be followed. We are, as you know, perfectly willing to resume weighing live stock at South St. Paul without expense to the owner of the stock, and we have so notified Doctor Miller, who is in charge of your affairs locally.

Yours respectfully,

T. E. GOOD, *President.*

Hon. HENRY C. WALLACE,
Secretary Department of Agriculture, Washington, D. C.

DEPARTMENT OF AGRICULTURE,
PACKERS AND STOCKYARDS ADMINISTRATION,
Washington, D. C., January 3, 1922.

DEAR MR. SECRETARY: As you know, certain questions relating to the supervision by the Secretary of Agriculture under the packers and stockyards act over the stockyards and the market agencies and dealers therein at South St. Paul, Minn., have been raised by the State Railroad and Warehouse Commission of Minnesota, the stockyards company, the commission men, and certain other agencies in the yards, and the marketing department of the State of South Dakota. In view of the importance of these matters, their consideration was delayed until an arrangement could be made for an informal meeting for discussing all of their phases at South St. Paul. This meeting was held on December 21, and all of the interests involved were invited to be represented. There was a very large attendance, and apparently a complete representation. Discussion was free and unrestrained by any formality and continued until apparently all arguments had been stated fully.

It was thought best not to attempt to announce at that meeting any final conclusion on our part, but to reserve the expression of our views until Judge Hainer could make a thorough investigation of the legal questions involved and prepare an opinion. I

promised that copies of our views would receive your personal consideration and would be sent to all of the interests involved, so that final consideration could be given to them and a complete understanding had of their effect in advance of action being required. Since this meeting a number of telegrams have been received by you from various interests asking, in effect, that State supervision and weighing be retained in the yards, and several Members of Congress have informally discussed the matter with you and us.

Judge Hainer has now completed the preparation of his opinion, and I attach a copy. It is clear from this opinion that the State jurisdiction, as heretofore established and enforced at these yards, overlaps the jurisdiction of the Secretary of Agriculture, substantially conflicts therewith, and can not be maintained. It also clearly appears that the provisions of the Federal law are mandatory, both with respect to the requirements imposed upon the persons subject to the law and the duties required of the Secretary of Agriculture. Consequently, the Secretary can not delegate his authority or the enforcement of the provisions of the Federal law to the authorities acting under the State laws. Of course, it does not follow, as intimated by some, that the assumption of Federal jurisdiction over these yards would mean a return to improper conditions that may have existed prior to State supervision, nor is the assumption of such jurisdiction to be regarded as uncomplimentary to the State with respect to its supervision.

We shall, of course, be very glad if the State authorities will work with us in any way possible, so that we may have the assurance that when any questions arise under Federal supervision the State's interests will be represented adequately.

CHESTER MORRILL,
Assistant to the Secretary.

DECEMBER 31, 1921.

Mr. CHESTER MORRILL,
Assistant to the Secretary.

DEAR MR. MORRILL: In compliance with your request I herewith submit my views of the law in regard to the administration of the packers and stockyards act, 1921, at the South St. Paul (Minn.) stockyards.

The determination of the questions involved requires an examination of the laws of Minnesota in respect to the regulation and supervision of the public stockyards of that State. The pertinent provisions of the laws bearing upon this question are as follows:

On April 25, 1919, the State of Minnesota enacted a law regulating public stockyards in that State and placing them under the supervision and control of the railroad and warehouse commission.

Section 1 of said act defines "public stockyards" and, as used in said act, means the stockyards into which live stock is received for the purpose of exposing the same for sale or for feeding the same and doing business for compensation, etc.

Section 2 vests the jurisdiction and supervisory power in the railroad and warehouse commission.

Section 4 of said act reads as follows:

"It shall be the duty of every public stockyard operator to furnish reasonable, adequate service and facilities for the accommodation of the public, and the rates, charges, and prices of such stockyards for the service performed by it shall be fair and reasonable. All unreasonable and excessive rates, charges, and prices are hereby declared unlawful."

Section 5 of said act provides as follows:

"Within sixty days after the taking effect of this act it shall be the duty of every public stockyard operator to forthwith file with the commission a schedule of its rates, charges, and prices for driving, watering, feeding, yarding, weighing, and caring for stock and for every kind of service performed by it, together with all rules and regulations used in the conduct of the business of public stockyards, all of which shall be kept on file by the commission and shall be open to public inspection. The commission may require each operator to post for public inspection at designated places so much of said schedule and regulations as it deems necessary for the information of the public."

On September 22, 1919, the legislature of that State passed a law effective January 1, 1920, providing for the licensing by the railroad and warehouse commission of commission men, traders, brokers, etc., entitled "An act to provide for licensing by the railroad and warehouse commission of all commission merchants, brokers, factors, or agents engaged in handling, buying, selling, or soliciting consignments of live stock at any public stockyards, and to fix the commission that may be charged by them, providing rules and regulations and providing penalties."

Section 1 of said act requires all commission merchants, brokers, etc., to procure licenses from the railroad and warehouse commission before permitted to transact business and furnish a bond to the State of not more than $20,000.

Section 2 of said act provides:

"On or before the first of January each year the commission shall furnish such applicant with a license good for one year, such a license to be posted in a conspicuous place in the office of the licensee. The fee for each license must accompany the application for license, and shall be $25. All moneys so collected shall be deposited in the State treasury and known as the 'live-stock weighing fund.'"

Section 8 of said act provides, among other things, that any person, firm, or corporation engaged in selling any live stock as specified in said act who fails or neglects to comply with any provisions of said act or any rules or regulations shall be guilty of a misdemeanor and be punishd by fine or imprisonment.

The State also enacted a law for the supervision and weighing of live stock at public stockyards, entitled "An act to provide for the supervision and weighing of live stock at public stockyards under the jurisdiction of the railroad and warehouse commission."

Section 1 provides that the railroad and warehouse commission shall appoint at public stockyards such weighers as may be necessary for the purpose of weighing live stock. Every such weigher shall give to the State a bond in the sum of $5,000 conditioned for the faitful discharge of his duty.

Section 3 provides that "The commission shall prescribe the fee necessary to cover the cost of supervision and weighing to be assessed and collected in such manner as the commission may prescribe. All moneys so collected shall be deposited in the State treasury and known as the 'live stock weighing fund' and paid out only on order of the commission and the auditor's warrant."

Section 7 provides, "Any person not duly appointed and qualified, who shall assume to act as such weigher, shall be guilty of misdemeanor and be punished by a fine of not less than $50 nor more than $100."

Rule 19 adopted by the railroad and warehouse commission for fixing charges for weighing of live stock provides as follows:

"Charges for weighing live stock are hereby fixed as follows: 2 cents per head for cattle; 2 cents per head for calves; 1½ cents per head for hogs; 1 cent per head for sheep. This charge shall be charged to and collected from each commission merchant producing the live stock to be weighed at any scale. Said commission merchant shall collect from the shipper said charges. Every dealer of live stock shall pay weighing charges as per the above schedule for each animal produced by him at any scale."

The State of Minnesota under the foregoing provisions of law has vested in the railroad and warehouse commission the same jurisdiction and supervisory power over public stockyards doing business in that State as it has over railroad companies. It requires all persons operating public stockyards to file with the commission a schedule of rates, charges, prices, etc., for feeding, yarding, weighing, etc., of live stock and for every kind of service performed by it.

This applies to all live stock received at public stockyards, whether it is an interstate or intrastate shipment. No distinction seems to have been made in the framing of these laws. It will be further observed that before any persons can carry on business in such stockyards, like commission men, brokers, traders, etc., they are required to produce licenses from the railroad and warehouse commission and pay a license fee of $25 per annum, and are also required to execute a bond to the State not to exceed $20,000, which shall be a continuous surety bond to be made in such form as the commission may prescribe. A weighing charge for weighing live stock is also made as stated above. These weighing charges are made on all live stock, whether received in interstate shipment or shipments locally within the State.

At an informal conference held at South St. Paul on the 21st instant it was suggested that the charge for weighing live stock shipped from points in South Dakota to South St. Paul market is a discrimination against such shippers and does not obtain in other large terminal markets, and that it is an added cost and unreasonable burden upon such shipments. Whether such charge for weighing is an unreasonable burden upon interstate commerce presents a serious question, and whether the State law which requires a commission man or broker to take out a license and pay an annual fee of $25 and also requires him to give a bond in a sum not to exceed $20,000 is an unnecessary and unreasonable burden upon interstate commerce also presents a serious question for determination. It would appear that such rates and charges constitute a burden upon commerce and that such a State law is violative of the commerce clause of the Federal Constitution and to that extent is void.

The recent case of the Farmers Grain Co. *v.* Langer (273 Fed. Rep. 635) involved the construction of the Laws of North Dakota, 1919, chapter 138, providing for the appointment of a State inspector of grades, weights, and measures, the power to establish grades, etc., for grains, feeds, and other agricultural products, by which the same shall be bought and sold, to issue licenses to persons engaged in buying grain, as deputy inspectors, to fix charges for grading, inspecting and weighing grain, and requiring all buyers of grain to procure licenses and pay an annual fee of $10 therefor. It was held unconstitutional as imposing a direct burden on interstate commerce.

In the Minnesota Rate case (230 U. S. 396) the Supreme Court of the United States in discussing this question used the following language:

"If a State enactment imposes a direct burden upon interstate commerce, it must fall regardless of Federal legislation. The point of such an objection is not that Congress has acted but that the State has directly restrained that which in the absence of Federal regulation should be free. If the acts of Minnesota constitute a direct burden upon interstate commerce, they would be invalid without regard to the exercise of Federal authority touching the interstate rates said to be affected."

On page 399 of the opinion the court said:

"There is no room in our scheme of government for the assertion of State power in hostility to the authorized exercise of Federal power. The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on: and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. * * * It has repeatedly been declared by this court that as to those subjects which require a general system of uniformity or regulation the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to the special requirements of local conditions, the States may act within their respective jurisdiction until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting State legislation. [Citing numerous authorities.] The principle, which determines this classification, underlies the doctrine that the States can not under any guise impose direct burdens upon interstate commerce."

In the case of Minnesota *v.* Barber (136 U. S. 313) the Supreme Court of the United States had before it for consideration the construction of the statutes of Minnesota approved April 16, 1899, entitled, "An act for the protection of the public health by providing for inspection, before slaughtering, of cattle, sheep, and swine designed for slaughter for human food." It was held that this was unconstitutional because it imposed a burden upon interstate commerce. On page 319 of the opinion the court said:

"The presumption that this statute was enacted, in good faith, for the purpose expressed in the title, namely, to protect the health of the people of Minnesota, can not control the final determination of the question whether it is not repugnant to the Constitution of the United States. There may be no purpose upon the part of a legislature to violate the provisions of that instrument, and yet a statute enacted by it, under the forms of law, may, by its necessary operation, be destructive of rights granted or secured by the Constitution. In such cases, the courts must sustain the supreme law of the land by declaring the statute unconstitutional and void."

On page 326 the court further said:

"It is, however, contended, in behalf of the State, that there is, in fact, no interference, by this statute, with the bringing of cattle, sheep, and swine into Minnesota from other States, nor any discrimination against the products or business of other States, for the reason—such is the argument—that the statute requiring an inspection of animals on the hoof, as a condition of the privilege of selling, or offering for sale, in the State, the meats taken from them, is applicable alike to all owners of such animals, whether citizens of Minnesota or citizens of other States. To this we answer, that a statute may, upon its face, apply equally to the people of all the States, and yet be a regulation of interstate commerce which a State may not establish. A burden imposed by a State upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the States, including the people of the State enacting such statute. (Robins *v.* Shelby Taxing District, 120 U. S. 489, 497; case of the State Freight Tax, 15 Wall. 232.) The people of Minnesota have as much right to protection against the enactment of that State, interfering with the freedom of commerce among the States, as have the people of other States. Although the statute is not avowedly, or in terms, directed against the bringing into Minnesota of the products of other States, its necessary effect is to burden or obstruct commerce with other States, as involved in the transportation into that State, for purposes of sale there, of all fresh beef, veal, mutton, lamb, or pork, however free from disease may have been the animals from which it was taken."

In the case of Houston & Texas Central Railroad *v.* The United States (234 U. S. 51), the Supreme Court of the United States in passing upon this question said:

"Wherever the interstate and intrastate transactions of carriers are so related that the Government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field."

This brings us to the consideration of the question whether the State laws in respect to the regulation and supervision of the stockyards at South St. Paul conflict with the packers and stockyards act, 1921, approved August 15, 1921, entitled, "An act to regulate interstate and foreign commerce in live stock, live-stock products, dairy products, poultry, poultry products, and eggs, and for other purposes." Section 301 of this act contains the following provisions:

"(a) The term 'stockyard owner' means any person engaged in the business of conducting or operating a stockyard.

"(b) The term 'stockyard services' means services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce, of live stock.

"(c) The term 'market agency' means any person engaged in the business of (1) buying or selling in commerce live stock at a stockyard on a commission basis, or (2) furnishing stockyard services; and

"(d) The term 'dealer' means any person not a market agency, engaged in the business of buying or selling in commerce live stock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser."

Section 304 of the act provides:

"It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard."

Section 305 provides:

"All rates or charges made for any stockyard serivces furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful."

Section 306 provides:

"(a) Within 60 days after the Secretary has given public notice that a stockyard is within the definition of section 302, by posting copies of such notice in the stockyard, the stockyard owner and every market agency at such stockyard shall file with the Secretary, and print and keep open to public inspection at the stockyard, schedules showing all rates and charges for the stockyard services furnished by such person at such stockyard. If a market agency commences business at the stockyard after the expiration of such 60 days such schedules must be filed before any stockyard services are furnished."

Paragraphs (g) and (h) provide for penalties for failure to comply with the provisions of this act or any regulations or orders made by the Secretary.

Section 307 provides as follows:

"It shall be the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services, and every unjust, unreasonable, or discriminatory regulation or practice is prohibited and declared to be unlawful."

Section 312 (a) reads as follows:

"It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use unfair, unjustly discriminatory, or deceptive practice or device in connection with the receiving, marketing, buying, or selling on a commission basis, or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce at a stockyard, of live stock."

Section 303 provides that no person shall carry on the business of a market agency or dealer at such stockyard unless he has registered with the Secretary under such rules and regulations as the Secretary may prescribe, and whoever violates this provision of the act is liable to penalty of not more than $500 for each offense and not more than $25 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

It will be observed that this Federal act vests in the Secretary of Agriculture full and complete power to regulate and supervise public stockyards which come within the provisions of section 302 of the above act. This same power of control and supervision at the South St. Paul market has been vested by the State laws in the rail-

road and warehouse commission. The State law and the Federal act cover the same field of operation in respect to the supervision of the stockyards at South St. Paul. The State law provides that no person shall engage in business of a commission merchant, trader, or dealer, etc., at the stockyards without procuring a license and paying an annual fee of $25, and in addition thereto, requires a bond. The State law provides for the weighing of cattle and the rules and regulations provide charges to be paid for such weighing by the shipper, etc. On the other hand, the Federal act provides that no person shall engage in the business of a market agency or dealer unless he register with the Secretary. The Federal act specifically provides that it shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard, and the term "stockyard services" as used in the Federal act means "services or facilities furnished a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce, of live stock."

It will thus be seen that the State laws and the Federal act covering the same subject matter are in direct and irreconcilable conflict. Which law controls at this stockyard? The answer to this question is that the Federal law must control and necessarily supersede the State law relating to the same subject. The stockyard at this point, the market agencies, and dealers, and all persons furnishing or rendering stockyard services as defined in the Federal law are subject to the exclusive jurisdiction, control, and supervision of the Secretary of Agriculture.

In the case of the Chicago, Rock Island & Pacific Railway Co. *v.* Hardwick Farmers Elevator Co. (226 U. S. 426), the Supreme Court held that there could be no divided authority over interstate commerce, and the regulations on that subject are supreme. On page 435 of the opinion the court in discussing this subject said:

"As legislation concerning the delivery of cars for the carriage of interstate traffic was clearly a matter of interstate commerce regulation, even if such subject was embraced within that class of powers concerning which the State had a right to exert its authority in the absence of legislation by Congress, it must follow in consequence of the action of Congress to which we have referred that the power of the State over the subject matter ceased to exist from the moment that Congress exerted its paramount and all-embracing authority over the subject. We say this because the elementary and long settled doctrine is that there can be no divided authority over interstate commerce and that the regulations of Congress on that subject are supreme. It results, therefore, that in a case where from the particular nature of certain subjects the State may exert authority until Congress acts under the assumption that Congress by inaction has tacitly authorized it to do so, action by Congress destroys the possibility of such assumption, since such action, when exerted, covers the whole field and renders the State impotent to deal with a subject over which it had no inherent but only permissive power. (South. Ry. Co. *v.* Reid, 222 U. S. 424.)"

In the case of the Farmers Grain Co. *v.* Langer (supra) the circuit court of appeals in the eighth circuit on May 3, 1921, decided that the grain inspection law of North Dakota, 1918, chapter 138, was invalid as in conflict with the United States grain standards act, under which uniform grades were established by which all grain shipped in interstate commerce should be required to be inspected and graded. In this case the State law authorized the State inspector to establish grades for grain, and the Secretary of Agriculture by the grain standards act enacted by Congress is vested with the same power. It was held that these powers were directly in conflict and that the Federal law superseded the State law. This is precisely the situation in respect to the regulation and supervision of the stockyards at South St. Paul. Under the Minnesota law this power of supervision is vested in the railroad and warehouse commission. The Federal law vests this same power in the Secretary of Agriculture. The powers and duties vested in the Secretary of Agriculture by this act are clear, specific, and mandatory. The supervisory and regulatory powers must necessarily be complete and such power and duty can not be delegated to the local authorities.

It was suggested at an informal hearing at South St. Paul that the railroad and warehouse commission should be permitted to supervise the stockyards and all agencies therein as heretofore, with the cooperation of the Secretary of Agriculture, and that the State should be permitted to supervise the yard by its State supervisor and to perform the duties of weighing of live stock shipped and received at this market, and to permit the State to charge a fee for weighing sufficient to pay all expenses of the supervision of the stockyards. It was further suggested that the amount of fees collected for weighing in the past year, amounting to approximately $60,000, has been expended in the weighing and other supervision expenses. It further appears that the scales, consisting of 16 or 17, in the stockyards at South St. Paul are owned by the stockyard company. It further appears that the stockyard company has rec-

ognized the jurisdiction of the Secretary of Agriculture and has filed a schedule of charges and rates for stockyard services. Under the said act it is the duty of the stockyard owner and all market agencies to furnish reasonable stockyard services at such stockyard, and it is made unlawful for any stockyard owner, market agency, dealer, etc., to engage in or use an unfair, unjustly discriminatory, or deceptive practice or device in connection with the receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, water, holding, delivery, shipment, weighing, or handling, in commerce at a stockyard, of live stock. This is a duty imposed upon the stockyard owner or market agency at such stockyard, and it is difficult to see how the Secretery of Agriculture can delegate this authority to the local authorities. The Secretary of Agriculture would have no authority to the local authorities. The Secretary of Agriculture would have no authority or jurisdiction to supervise the railroad and warehouse commission or any other State agency.

It is true that the act provides that he may cooperate with any State agency or the local authorities, or that State agencies may cooperate with the Secretary, but this does not mean that the local authorities have the power to supervise and regulate the stockyard at this place and the other agencies therein, subject to the jurisdiction of the Secretary or such rules as he may adopt. It is suggested that the United States grain standards act was administered in this manner. The grain standards act contains the following proviso in section 7:

"*Provided*, That in any State which has or which may hereafter have a State grain inspection department established by the laws of such State the Secretary of Agriculture shall issue licenses to the persons duly authorized and employed to inspect and grade grain under the laws of such State."

No such power is conferred in the act under consideration. This matter was considered at the hearing before the Committee of Agriculture, House of Representatives, Sixty-seventh Congress, first session, and on page 34 of the hearing there was offered an amendment which reads as follows:

"SEC. 405. The provisions of Title III shall not apply to any stockyard owner or market agency furnishing stockyard services at a stockyard in a State which has or may hereafter establish an agency authorized and empowered to regulate stockyard services or the rates or charges made therefor or the regulations and practices in respect to furnishing stockyard services to be established, observed, or enforced by a stockyard owner in such stockyard; nor shall the provisions of Title III apply to any stockyard owner, market agency, or dealer in a stockyard in a State which has or may hereafter establish an agency authorized and empowered to regulate the practice of devices used or employed by any such stockyard owner, market agency, or dealer in such stockyard: *Provided*, That this section shall not be held to limit the application of Title III to any stockyard owner, market agency, or dealer in respect to any matter or regulation not within the authority of such agency."

This amendment received careful consideration by the committee and it appears that the committee did not adopt the amendment.

The constitutionality of the "packers and stockyards act, 1921," was upheld in the United States District Court, Northern District of Illinois, Eastern Division, in the case of Stafford *v.* Wallace, Secretary of Agriculture et al. The decision was rendered by Circuit Judge Evans and District Judges Landis and FitzHenry. The suit was brought by the commission men and traders of Chicago, in which they sought to enjoin the enforcement of the act on the ground that the commission man and dealers at the stockyard in Chicago were not engaged in interstate commerce. The court denied the application for injunction and held that the act was constitutional and valid. The court in the course of opinion used the following language:

"That the stockyards are subject to regulation as a part of the interstate shipment has been judicially determined and is not now challenged by complainants. The stockyards, the live-stock depots of the railroads, are as necessary a part of the carriage as the passenger depots and freight depots, or as the yards in which interstate shipments are unloaded for the purpose of feeding and watering. If Congress can say to the railroads that the engine which is used to haul the interstate shipment is a subject of congressional regulation, that the engineer who sits in the cab and operates the engine is such a subject, that his contract and his claim for liability in case of death and his hours of service may be regulated by act of Congress, then can the court deny to the same body the right to legislate respecting the terminal facilities, the stockyards, the instrument as essential to the completed interstate shipment as the engine or the engineer.

"Are stockyards, which are nothing more than mere live-stock depots into and through which the current of interstate commerce flow, instrumentalities of interstate commerce?

"The answer must be in the affirmative, for the stockyards are as distinctly employed in that commerce and are as indispensable to it as are the cattle cars, engines, and rails of the railroad which bring the subject matter of the commerce from one State to the stockyards in another for sale, for slaughter, or reconsignment.

"When once we consider that the stockyards themselves are instrumentalities of interstate commerce, then the conclusion is irresistible that the regulatory powers of Congress apply to those engaged in or participating in that commerce within the stockyards, and we think that the Supreme Court in Swift *v.* United States, supra, meant to cover this situation when it said: 'When cattle are sent for sale from a place in one State, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the States, and the purchase of the cattle is a part and incident of such commerce.'

"The recent decision of the Supreme Court in Dahnke-Walker Milling Company *v.* C. T. Bondurant likewise supports conclusion. The court says: 'Such commerce is not confined to transportation from one State to another, but comprehends all commercial intercourse between different States and all the component parts of that intercourse.'"

The stockyard at South St. Paul is one of the largest terminal live-stock markets in the United States through which the current of interstate commerce flows. To this great terminal market live stock is brought from various States for sale, for slaughter, or reconsignment. The greater portion of business transacted here is interstate, and a large portion of the live stock that is brought to this market from within the State is slaughtered and the manufactured product shipped to other States.

Did Congress intend to exempt the State of Minnesota from the operation of this law? Did Congress intend to make an exception of the South St. Paul market? Why should an exception be made? Why should this Federal act apply to 47 States of the Union and be denied to the South St. Paul market?

Manifestly, the Federal law is national in character and has for its object and purpose to establish a uniform plan of regulation applicable to all the large markets in the various States and to vest that power and authority in one agency. An examination of the committee hearings and the debates in Congress clearly confirms this conclusion.

The State law could merely regulate and supervise intrastate shipments and as shown by the authorities heretofore cited, the State law could not operate upon interstate shipments of live stock in this market, nor can the State authorities place any burden upon interstate shipments. Hence, the regulatory power of the State, in the absence of congressional legislation, could only apply to local shipments of live stock to this market. Manifestly, such supervisory power would be ineffective and of little value when there is taken into consideration the great volume of business of an interstate character that is transacted at this market.

On the other hand, the Federal law is sufficient in scope and power to supervise and regulate not only the yards but all agencies and activities therein, because the Federal law, as stated in the above cases, not only embraces interstate shipments but also operates upon intrastate shipments. In other words, the Federal law is all embracing and covers the entire field of operation, which could not possibly be done under the administration of the local laws of the State. It has been suggested that the State authorities should have the right and authority to administer this law under the supervisory power of the Secretary of Agriculture, and that the present supervisor, weighers, and other employees at the yards should perform the duties of supervisor, weighers, etc., under the supervisory control of the Secretary.

I am utterly unable to find any warrant or authority for the exercise of such power by the State authorities. Either the State has exclusive jurisdiction or the Federal Government has exclusive jurisdiction. As stated before, the State law and the National law are in direct conflict. Which law shall prevail? Certainly the Federal law must prevail and is supreme. There can be no divided authority in respect to the regulation and supervision of these yards. Congress had vested this undoubted authority in the Secretary of Agriculture, and this power and authority can not be delegated, much less surrendered, to any other power or agency.

In the case of Southern Railway Co. *v.* Reid (222 U. S. 434) the Supreme Court, in discussing this subject, said:

"As to the extent of the power and the occasions for its exercise, controversies have arisen, and in deciding which the power of the State over the general subject or commerce has been divided into three classes: First, those in which the power of the State is exclusive; second, those in which the States may act in the absence of legislation

Congress; third, those in which the action of Congress is exclusive and the State can t act at all."

It developed at the conference at South St. Paul that this yard and market employs people, consisting of the following: 1 supervisor, 1 assistant supervisor, 1 chief clerk, assistant clerk, 1 stenographer, 5 yard inspectors, 4 hog shrinkers, and 18 weighers, hat the expenses are borne by fees collected from shippers for weighing livestock hich is received in the yards at this point, and that the total amount of fees during he past year approximated about $60,000. This fee is paid by the shippers of live tock and is a burden passed to them. On the other hand, the packers' and stock- ards act is administered without any expense whatsoever to the State or local authori- ies or from any fees or charges of any character or nature collected from the shippers r from any other source. It was also suggested at this conference at St. Paul that the supervisory power over the stockyards at this point should be in some neutral body or agency and that the local authorities of Minnesota constitute such an agency. But can it be said that Congress had not provided such a neutral agency by vesting this supervisory power in the Secretary of Agriculture? Can it be said that the Federal regulations and the supervisory power of the Secretary of Agriculture is not as effective to remedy abuses as the State authorities or agencies? Would the fact that this power has been vested by Congress in the Secretary carry with it the presumption, as was suggested by some at this conference, that the evils and abuses of the "old system" of weighing would be continued? Certainly not.

Can the authorities of the State of Minnesota deny the power and authority of the Secretary of Agriculture to exercise the powers vested in him by Congress? It seems to me that the State should recognize this paramount law of Congress dealing with this great market, that the State authorities and agencies should work with the Secretary of Agriculture to see that the provisions of the law are effectively carried into execution.

Conflict of jurisdiction between Federal and State authorities is always a delicate matter and necessarily requires serious and careful consideration, which I have endeavored to give in preparing this memorandum. I have endeavored to the best of my ability, to attempt to harmonize these conflicting laws. But I am unable to do so in the light of the decisions of the Supreme Court of the United States in construing similar laws. Congress has seen fit to vest this power and jurisdiction in the Secretary of Agriculture and imposes upon him the duty and responsibility to carry into effect all its provisions.

Very truly yours,

BAYARD T. HAINER,
Attorney for Packers and Stockyards Administration.

UNITED STATES DEPARTMENT OF AGRICULTURE,
PACKERS AND STOCKYARDS ADMINISTRATION,
Washington, D. C., January 11, 1922.

DEAR MR. SECRETARY: Since preparing my memorandum opinion on the subject under date of December 31, I have received a memorandum brief from Hon. Halvor Steenerson and also a memorandum brief from Hon. Henry C. Flannery, assistant attorney general of Minnesota, submitting their views on the subject of the supervision of the stockyards at South St. Paul, with special reference to the subject of weighing of live stock at this yard and to be continued by State weighers pursuant to chapter 40, Special Session Laws of Minnesota, 1919.

The propositions discussed and the principles involved in these briefs are covered in my memorandum opinion, and are sustained by the decisions of the Supreme Court of the United States in construing similar statutes. But as supplementary to my views heretofore given, I desire briefly to call attention to the cases cited by Congressman Steenerson.

In the case of Stafford et al. *v.* Wallace, Secretary of Agriculture, et al., the United States district court in its recent decision in construing the constitutionality of the 'packers and stockyards act, 1921," approved the rule laid down in Swift case defining interstate commerce. In this case it was contended at Chicago, as it is contended here, that the commission men and traders were not engaged in interstate commerce; hat the business was wholly of an intrastate character and, therefore, they were not ubject to the packers and stockyards act, and in support of the contention they cited he case of Hopkins *v.* United States (171 U. S. 578), which case is referred to by Congressman Steenerson. But the court held that the Hopkins case was not controlling. Then the Hopkins case was decided by the Supreme Court of the United States, of

course Congress had not acted upon the subject, and in deciding that case the Supreme Court merely held that in the absence of congressional legislation the commission men and traders at Kansas City were not subject to the antitrust act and that they were not engaged in interstate commerce. But in the Stafford case, referred to above, the United States district court at Chicago held that the Union Stockyards at Chicago were instrumentalities of interstate commerce and that the regulatory powers of Congress apply to those engaged in or participating in that commerce within the stockyard.

I wish to again call your attention to the Minnesota Rate case (230 U. S., p. 399), where the court in discussing this subject said:

"There is no room in our scheme of government for the assertion of State power in hostility to the authorized exercise of Federal power. The authority of Congress extends to every part of interstate commerce and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations."

It seems to me that this is clearly applicable to the situation at South St. Paul. Congressman Steenerson has also cited the case of Patapsco Guano Co. *v.* North Carolina Board of Agriculture (171 U. S. 345). In this case the Supreme Court of the United States upheld the act of the Legislature of North Carolina providing for the inspection of fertilizers and fertilizing materials and the charge of 25 cents per ton to defray the cost of such inspection. This State law was upheld as an inspection law which is reserved to the States until Congress legislates upon the same subject. In this case Congress had not legislated upon that subject, and on page 355 of the opinion the court said:

"The right to make inspection laws is not granted to Congress, but is reserved to the States; but it is subject to the paramount right of Congress to regulate commerce with foreign nations and among the several States."

In the case of McLean *v.* Denver & Rio Grande Railroad Co. (203 U. S., p. 38) the Supreme Court of the United States declared valid the law of the Territory of New Mexico authorizing the inspection of hides and making it an offense for any railroad company to receive for shipment beyond the limits of the Territory hides which had not been inspected as required by the laws of that Territory. On page 55 the court used the following language:

"Upon the whole case, we are of the opinion that, in the absence of congressional legislation covering the subject and making a different provision, the act in controversy is a valid exercise of the police power of the Territory, and not in violation of the Constitution giving exclusive power to Congress in the regulation of interstate commerce."

It will thus be seen that this Territorial law was upheld on the theory that Congress had not acted upon the subject, and, of course, in the absence of such congressional legislation the act was valid. This is clearly the uniform holding of the Supreme Court of the United States in construing similar legislative enactments.

In the case of Pittsburgh et al. *v.* Louisiana (156 U. S. 590) it is held that the State statutes of Louisiana providing for the appointment of coal and coke boat gaugers is a valid exercise of power in the absence of congressional legislation upon the same subject.

Assuming that the laws of Minnesota in respect to the supervision and regulation of the stockyards do not impose a burden upon interstate commerce, such laws are valid in the absence of congressional legislation on the same subject, but when Congress does act upon the same subject or subjects, then such action by Congress necessarily supersedes the State laws.

It is suggested in the memorandum of Assistant Attorney General Flannery "that the Federal act only requires the stockyard itself to provide reasonable facilities or to furnish reasonable services in connection with weighing, it is not an essential requirement of the act itself that a stockyard furnishing facilities be required also to completely operate the same. In that respect regulation 16 would seem to go beyond what might be termed the mandatory provision of the law * * * and by authorizing the continuance of State operation all of the benefits of both the Federal and State acts can be retained. This can easily and lawfully be accomplished by a slight addition to regulation 16."

Regulation 16 referred to evidently means regulation 14, in regard to weighing, which is as follows:

"Every stockyard owner or market agency that furnishes weighing facilities at stockyards shall maintain and operate such facilities so as to insure accurate weights."

We can see no conflict between this regulation and the said act. Section 304, in respect to the duties of stockyard owners and market agencies, reads as follows:

"It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard."

And to further show the intention of Congress section 311, bearing upon this question, reads as follows:

"Whenever in any investigation under the provisions of this title, or in any investigation instituted by petition of the stockyard owner or market agency concerned, which petition is hereby authorized to be filed, the Secretary after full hearing finds that any rate, charge, regulation, or practice of any stockyard owner or market agency, for or in connection with the buying or selling on a commission basis or otherwise, receiving, marketing, feeding, holding, delivery, shipment, weighing, or handling, not in commerce, of live stock, causes any undue or unreasonable advantage, prejudice, or preference as between persons or localities in intrastate commerce in live stock on the one hand and interstate or foreign commerce in live stock on the other hand, or any undue, unjust, or unreasonable discrimination against interstate or foreign commerce in live stock, which is hereby forbidden and declared to be unlawful, the Secretary shall prescribe the rate, charge, regulation, or practice thereafter to be observed, in such manner as, in his judgment, will remove such advantage, preference, or discrimination. Such rates, charges, regulations, or practices shall be observed while in effect by the stockyard owners or market agencies parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

It will thus be seen that it is made the duty of the stockyard owner and market agency to furnish upon reasonable request without discrimination reasonable stockyard services at such stockyard, and for failure to do so heavy penalties are provided.

Manifestly, the railroad and warehouse commission or any other State agency could not be regarded under the act as a market agency. The Federal act specifically provides who shall furnish these stockyard facilities, but it is further suggested by the Assistant Attorney General that the rule in regard to weighing could be amended by adding thereto the following: "Except in States where such operation is conducted by State weighers pursuant to State law." But this amendment to the law is subject to two serious objections: First, that this would be an amendment of the Federal act in effect which would be beyond the power and jurisdiction of the Secretary of Agriculture; and, second, that the act imposes this duty and obligation upon the Secretary of Agriculture and that such power, duty, and obligation can not be delegated to the railroad and warehouse commission or to any other local authority.

In conclusion, permit me to say that after careful consideration of all the suggestions and authorities submitted, I am constrained to adhere to my views submitted to you in my memorandum opinion of December 31.

Very truly yours,

BAYARD T. HAINER, *Attorney.*

JANUARY 4, 1922.

DEAR SIR: The questions raised by the State railroad and warehouse commission, the stockyards company, the live stock exchange, and a number of other interests concerned with activities in the South St. Paul yards, in regard to Federal supervision under the packers and stockyards act at these yards, have received my careful thought and consideration. In order that every point of view might have an opportunity for expression, as you know, Mr. Morrill held an informal meeting at South St. Paul on December 21, at which, I am told, all interests known to be concerned were represented and there was a free expression of views. Mr. Morrill tels me that no final conclusion on behalf of the Department of Agriculture was announced at this meeting, but the expression of our views was withheld until Judge Hainer, of the packers and stockyards administration, could have an opportunity to review the legal questions involved and prepare an opinion, and until the matter could receive my personal attention. I also understand from Mr. Morrill that he promised a copy of our views should be furnished to each of the interests represented at the South St. Paul meeting for consideration in advance of action being required thereon.

I have reviewed Judge Hainer's opinion, a copy of which is attached, and Mr. Morrill's comment upon it, and it appears to me that the conclusions therein expressed must be sound. It has been suggested that a hearing be held, but, in view of the very full hearing December 21 and of the legal aspects as set forth in Judge Hainer's opinion, it does not seem that a hearing of the usual sort would be of material help. I shall, however, be very glad to have any suggestions you may care to make not later than January 15, if practicable.

Very truly yours,

HENRY C. WALLACE, *Secretary.*

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., February 4, 1922.

MY DEAR MR. SECRETARY: I have given careful consideration to your letter of January 14, 1922, in which you ask for my opinion concerning an apparent conflict between the provisions of the "packers and stockyards act, 1921," and the regulations of stockyards by the statutes of the State of Minnesota.

The laws of the State of Minnesota provide for supervision and regulation, including actual weighing of live stock by State officers under supervision of the railroad and warehouse commission of such State. The "packers and stockyards act, 1921," gives similar supervisory power to the Secretary of Agriculture. That there is a conflict between the State and Federal laws in this respect can not be questioned. If the Federal law is within the constitutional rights of Congress to enact, such law in our system of government is necessarily supreme and paramount within its sphere and there can be no room for divided authority.

The question, then, in the last analysis is as to the power or right of Congress to enact the packers and stockyards act, 1921, with respect to the supervision and regulation of stockyards as therein provided. It is the duty of executive officers to assume the constitutionality of an act of Congress and to enforce its provisions until such act of Congress is declared unconstitutional by a court of competent jurisdiction. In the absence of such action by the courts, an executive officer has no discretion to exercise and no alternative but to enforce the law.

It appears that no court has declared this law unconstitutional and, therefore, it is your duty to enforce the same as a valid act of Congress, which is, as above stated, supreme in its sphere of action over any State law upon the same matter and which will admit of no divided authority between the Federal and State officers.

The suggestion has been made that you may delegate the State officials to represent you in the enforcement of such law, in respect especially to weighing of live stock in the South St. Paul stockyards. Congress has imposed upon the Secretary of Agriculture the duty of administering this act and such duty and obligation can not be delegated to officials of any other government but must be performed by the Secretary of Agriculture or his duly authorized and acting agents and officers.

In arriving at the above conclusions careful consideration has been given to all of the briefs and memoranda presented with your communication, together with any others that may have been filed with the department upon this question, and I am of the opinion that the recommendations contained in the memorandum by Judge Hainer, that it is your duty to enforce this law and in such enforcement no division of authority is permissible, and you are not permitted to delegate any of your authority to State officials, are proper. Of course, in arriving at such conclusions Judge Hainer has considered and passed upon the constitutionality of the "packers and stockyards act," upon which question I feel at this time I should express no opinion, as above stated.

In accordance with the suggestion in recent conversations with your representatives, I am not issuing this as a formal opinion to be published as an opinion of the Attorney General, but in the nature of a letter or memorandum for the use of your office.

Sincerely yours,

H. M. DAUGHERTY, *Attorney General.*

Hon. HENRY C. WALLACE,
Secretary of Agriculture, Washington, D. C.

STATE OF SOUTH DAKOTA,
BRANCH OFFICE DEPARTMENT OF MARKETS,
Sioux Falls, S. Dak., September 8, 1921.

SECRETARY OF AGRICULTURE,
Washington, D. C.

MY DEAR SIR: On August 17 I made an investigation as to the live stock marketing conditions at the South St. Paul stockyards. In connection with various matters that came under my observation I found that an order had been established by the Minnesota Railroad and Warehouse Commission whereby a fee of 2 cents per head was charged for weighing cattle sold at that market, 1½ cents per head for hogs, and 1 cent per head for sheep.

During the past two years I have had occasion to visit a number of live-stock markets west of Chicago, and it is the only market where I have made an investigation that charged a fee for the weighing of live stock sold at those markets.

During the month of July 2,438 head of cattle, 303 head of calves, 15,209 head of hogs, and 811 head of sheep were shipped from South Dakota points to the South St. Paul stockyards and marketed at that point.

During the month of August the shipments from South Dakota points to the South St. Paul market was 8,192 head of cattle, 754 head of calves, 13,341 head of hogs, 1,227 head of sheep, and the penalty that our shippers had to pay for the weighing of this live stock at the South St. Paul market amounted to $692.37.

Based upon former shipments from South Dakota points to the South St. Paul market, our shippers would pay a penalty of approximately $6,000 a year under this order.

I feel that our shippers are not deriving one cent of benefit through the establishment of this order by the Railroad and Warehouse Commission of the State of Minnesota, and hope that some action will be taken by the Department of Agriculture whereby the provisions of this order would not apply on interstate shipments.

Yours truly,

F. O. SIMONSON,
Terminal Representative, Department of Markets.

SEPTEMBER 13, 1921.

Mr. F. O. SIMONSON,
Terminal Representative, Department of Markets, Sioux Falls, S. Dak.

DEAR SIR: Your letter of September 8, with reference to an investigation conducted by you on August 17 as to live-stock marketing conditions at the South St. Paul stockyards, has been received.

It is noted that you consider the fees now being assessed by the Railroad and Warehouse Commission of the State of Minnesota for weighing live stock at that market to be unwarranted in so far as shippers from South Dakota points are concerned. According to the "packers and stockyards act, 1921," a copy of which is inclosed, the Secretary of Agriculture is authorized to investigate complaints of this kind with a view to taking such action as may be warranted. We are proceeding now with arrangements for the administration of this act and will proceed with the consideration of your complaint in the near future.

It probably would facilitate our investigation if you will secure specific information from shippers who have paid the fees referred to and, if possible, furnish account sales covering shipments on which this weighing fee has been assessed. Please advise concerning this at your earliest convenience.

Very truly yours,

———— ————, *Assistant to the Secretary.*

AN OPEN LETTER TO HON. HENRY C. WALLACE, SECRETARY OF THE UNITED STATES DEPARTMENT OF AGRICULTURE, PROTESTING AGAINST JOINT FEDERAL AND STATE CONTROL OF THE SOUTH ST. PAUL MARKET UNDER TERMS OF HAUGEN LAW (H. R. 6320).

SUMMARY OF PROTEST.

1. The live-stock business at South St. Paul is interstate—not limited to Minnesota receipts.
2. The proposed agreement is not in accord with the intent of the law, but is urged by Minnesota officials for political purposes.
3. The present State supervision is unsatisfactory and burdensome to the South St. Paul market and its patrons in Minnesota and the Northwest.
4. The State weighing system is unnecessary and expensive and should be abolished at once.
5. Federal and State supervision are impractical and a discrimination against South St. Paul.
6. The new Federal law should be enforced uniformly at all terminal markets without regard to the existing supervisory departments.
7. No cooperative agreement should be made until after the Secretary has investigated thoroughly conditions now existing at South St. Paul and in Minnesota.

PROTEST TO SECRETARY WALLACE.

Published reports would indicate that Secretary Henry C. Wallace, of the United States Department of Agriculture, under whose jurisdiction the so-called meat packing and stockyards law, (H. R. 6320), will be enforced, has agreed to cooperate with the Minnesota Railroad and Warehouse Commission to the extent that the present State supervisor of public stockyards and his department will be retained at South St. Paul or taken over by the Federal authorities.

Having had two years' experience under State supervision and knowing its incompetency, the South St. Paul Live Stock Exchange wishes to register a vigorous protest against the proposed cooperative agreement between the Federal and State departments for the following reasons:

1. The live-stock business at South St. Paul yards and packing plants is not limited to Minnesota receipts. It is interstate and conforms absolutely to the definition of "commerce" as defined in the Haugen law recently enacted. (Sec 2, 6–b.) Records show that practically 50 per cent of the yearly receipts originate from points outside Minnesota.

2. The proposed cooperative agreement is utterly opposed to the intent of the law and is purely a political subterfuge on the part of Minnesota officials to save their stockyards market organization for political purposes and a part of their scheme to keep market regulation a political issue in this State. Although the law does provide in section 407, that the Secretary may cooperate with State and other established agencies, it was not the intent of Congress that State supervision should continue but that the law should be enforced uniformly at all markets by the authorized Federal authorities. In fact, this question was raised in the debate in both houses and was voted down by large majorities.

In substantiation of this argument, we refer the Secretary to the statement of the House conferees in the report submitted to the House on August 2, 1921, previous to the final passage of the bill. In reference to amendment No. 3 to section 2, (6–b), which was rejected the report says:

"This amendment strikes out of the bill a definition of 'commerce' intended to make it clear that Congress is looking at the meat packing and live-stock industry as a whole, that the evils sought to be remedied are countrywide in their scope and that Congress intends to exercise, in the bill, the fullest control of packers and stockyards which the Constitution permits."

A reading of the provision as it now stands in the law is proof sufficient that Congress intended that the Federal law should be supreme in all the States and at all markets.

3. The present State supervision, as exercised by the Minnesota department of public stockyards, has not proven satisfactory and is an unnecessary burden upon the industry at this market. It is not practical and not consistent with the Federal law that State supervision should remain after the Secretary assumes control. Therefore, we demand that the State department be not recognized.

4. The most pernicious practice put into operation by the Minnesota department is the State weighing system and its immediate abolishment is of the utmost importance. State weighing is costing patrons of the South St. Paul market in Minnesota and producers in the States of North and South Dakota, Montana, Wisconsin, northern Iowa, and northern Michigan close to $100,000 annually.

Investigation shows that the weighing charge averages around $1.09 a carload and this sum does not include the weighing cost paid by yard dealers as every time an animal is weighed, a charge of 2 cents a head for cattle, 1½ cents for hogs, and 1 cent for sheep is levied against the owner. The weighing service was formerly performed by the Union Stockyards Co. without charge and was just as satisfactory and more efficient than it is under the State régime.

It is a matter of record that the State weighing system was devised by the supervisor after the legislature had declined to make any further appropriations from the general funds for the maintenance of the bureau. It was a political move and the funds derived, viz, $100,000 a year, are used to maintain a large and unnecessary group of employees, who procured their jobs through political pull and are acting as political outposts for various State officials and members of the legislature to whom they owe their appointments. The whole system is seeping with politics to the detriment of live-stock producers, the market and the firms doing business thereon.

Furthermore, the weighing charge acts as a discrimination against South St. Paul in competition with other terminal markets. Many shippers protest the payment of this fee and frequently ship to a competing market where there is no weighing charge in order to cut down the cost of marketing There is no sentiment in favor

of State weighing, except from politicians and their friends and appointees who wish to hold their jobs and retain their positions in the department.

5. It is an old saying that "no man can serve two masters," and it is not logical to expect that the market interests can conform to both State and Federal regulations and get a square deal. For instance, commission firms are now bonded to the live-stock exchange, the stockyards company, and the State of Minnesota. Manifestly, they should not be expected, nor is it necessary, to take out an additional bond to the Federal Government unless the State bond is canceled. The Federal Government must assume full and complete control of the market and its agencies or complications are bound to ensue.

6. Under the Haugen act, as previously pointed out, it was intended that the Federal law should be supreme and that it should be enforced impartially at all live-stock markets. The retention of the Minnesota department will violate the spirit and intent of the law and result in continued agitation and discontent. The South St. Paul market agencies, not dominated by State politicians, are ready and willing to cooperate to the utmost with Secretary Wallace and his officials but insist that satisfactory supervision can only be obtained by the elimination of the State department.

7. For these reasons and with the best interests of the South St. Paul market at heart, now as always, officials of the live-stock exchange urgently request that the Secretary make a complete and thorough investigation of conditions at South St. Paul, resulting from State supervision, before committing himself or his department to a cooperative agreement with the Minnesota Railroad and Warehouse Commission or its stockyards department. We are satisfied that he will find the situation as we have stated it.

Respectfully submitted,

SOUTH ST. PAUL LIVE STOCK EXCHANGE,
N. P. ROGERS, *President.*

AUGUST 20, 1921.

ORDER TO SHOW CAUSE AND RESTRAINING ORDER.

District court, first judicial district. State of Minnesota, plaintiff, *v.* St. Paul Union Stockyards Co., defendant.

Upon the verified complaint in this action this day filed in the office of the clerk, and upon the application of the attorney general, Clifford L. Hilton,

It is hereby ordered that the defendant show cause before this court at a special term thereof to be held in the courthouse in the city of Hastings on February 18, 1922, at 10 o'clock in the forenoon of that day, why a preliminary injunction should not be issued restraining the defendant and all of its officers, directors, agents, servants, and employees, during the pendency of this action and until the final determination thereof, from weighing any live stock not belonging to the defendant at the stockyards of the defendant at South St. Paul, which is sent thereto for sale, and from issuing any certificates of weight therefor, and from in any manner, preventing, obstructing, or interfering with the State weighers in the weighing of live stock at said stockyards, and from preventing or attempting to prevent, in any respect, full compliance with the provisions of chapter 40, Special Session Laws of 1919.

It is further ordered that the defendant and all of its officers, directors, agents, servants, and employees be and they are hereby restrained from weighing any live stock not belonging to the defendant at the stockyards of the defendant at South St. Paul, which is sent thereto for sale, and from issuing any certificates of weight therefor, and from, in any manner, preventing obstructing or interfering with the State weighers in the weighing of livestock at said stockyards, and from preventing or attempting to prevent, in any respect, full compliance with the provisions of chapter 40, Special Session Laws of 1919, until the hearing and determination hereof.

Let service of this order be made as early as noon of February 10, 1922.

ALBERT JOHNSON, *District Judge.*

SUMMONS.

District court, first judicial district. State of Minnesota, plaintiff, *v.* St. Paul Union Stockyards Co., defendant.

The State of Minnesota to the above-named defendant:

You are hereby summoned and required to answer the complaint in this action which has been filed in the office of the clerk of the above-named court and a copy of which is hereto annexed and herewith served upon you, and to serve a copy of your answer thereto upon the subscribers at their office in the capitol at the city of St. Paul, Minn., within 20 days after the service of this summons upon you, exclusive of the day of service, and if you fail to answer said complaint within the time prescribed, the plaintiff will apply to the court for the relief demanded therein.

CLIFFORD L. HILTON,
Attorney General.

HENRY C. FLANNERY,
Assistant Attorney General.

COMPLAINT.

District court, first judicial district. State of Minnesota, plaintiff, *v.* St. Paul Union Stockyards Co., defendant.

The plaintiff, for its cause of action against the defendant, alleges:

I. That the defendant is a corporation organized and existing under and pursuant to the laws of the State of Minnesota, that it owns and operates a stockyard situated at South St. Paul, in said State, into which live stock is received for the purpose of exposing the same for sale, that it is doing business thereat for compensation, and is a public stockyard as the same is defined in chapter 461, Laws of Minnesota of 1919.

II. That the Legislature of the State of Minnesota, on September 22, 1919, duly adopted a certain legislative act designated as chapter 40, Special Session Laws of 1919, and entitled, "An act to provide for the weighing of live stock at public stockyards under the jurisdiction of the railroad and warehouse commission," which act became effective on January 1, 1920, and a copy of which is hereto annexed, marked "Exhibit A" and made a part hereof.

III. That the defendant corporation is owned and controlled by Swift & Co. and Armour & Co., which said companies also own and operate packing plants at South St. Paul, in conjunction with the stockyards of the defendant company; that said Swift & Co. and Armour & Co. purchase approximately 50 per cent of all live stock received at said stockyards and slaughter the same in said packing plants.

IV. That the stockyard of the defendant company is one of the largest in the United States; that thousands of live-stock raisers annually ship their live stock thereto to be sold; that 59,960 cars of live stock were received thereat during the year 1921; that all of such live stock which is sold thereat is weigheed on scales located in said stockyard and belonging to the defendant company, and that the weights taken on said scales are used as the basis of settlement between the purchasers and shippers for the live stock so sold.

V. That on and prior to January 1, 1920, there were 15 scales at said stockyard, which were used in weighing said live stock, which number has since been increased to 18; that under and pursuant to said chapter 40, special session laws of 1919, the railroad and warehouse commission appointed a force of State weighers to operate said scales, and since that date said State weighers have been continuously engaged in weighing the live stock at said stockyard; that said weighers have reported daily to the State supervisor of stockyards and the said supervisor has issued weighing certificates to all interested parties, setting forth therein the number of animals weighed, for whose account weighed, and the actual weight of each animal or animals weighed, as provided in said law, and that said certificates have been and are used as the basis of settlement for all live stock sold at said stockyard.

VI. That prior to January 1, 1920, all of said scales were operated by employees of the defendant company; that because of the aforesaid facts such employees were in effect employees of the purchasers of a large proportion of the live stock sold at said stockyard and such operation was inimical to the interests of the shippers of live stock.

VII. That upon the taking over the operation thereof by the railroad and warehouse commission, as aforesaid, the said scales were inspected by the State supervisor of scales and were all found to be inaccurate and incorrect in many respects, the particulars of which are set forth in the report of said supervisor of scales, a copy of which is attached hereto, marked "Exhibit B," and made a part hereof; and that by reason of said defects many shippers of live stock were deprived of money to which they were entitled therefor.

VIII. That, notwithstanding the provisions of said chapter 40, special session laws of 1919, the defendant threatens and intends, and unless restrained, will immediately take possession of said scales, place its own employees in charge thereof, have them weigh all live stock received at said stockyard and issue weighing certificates therefor, and forcibly attempt to obstruct and prevent the State weighers from weighing such live stock and from performing the duties imposed upon them by said chapter 40, special session laws of 1919; that such threatened action, if accomplished, will result in less accurate weights being furnished, with consequent loss to the shippers, and will destroy the assurance which shippers now have that the weighing is accurately done by disinterested weighers, and will deprive the shippers of the protection now afforded by the bonds required of State weighers; that such intended action of the defendant may and probably will result in disorder, conflict, and breaches of the peace; that such threatened action will interrupt and hamper the weighing of live stock at said stockyard for an indefinite time, and that, unless the operation of weighing said live stock is continuous and uninterrupted, there will immediately occur great confusion and turmoil which will hamper and delay the movement and sale of such live stock, to the great injury and loss of the shippers and owners thereof; that the only source of revenue which is available for the payment of the salaries of said State weighers is the fees collected for the weighing service, and if such threatened action is accomplished the State will thereby either become obligated to the said weighers for large sums, which it will have no present means of paying, or it will have to discharge said weighers and thereby destroy an organization of trained experts which can only be replaced with great difficulty; that because of the foregoing the State of Minnesota and the citizens thereof will thereby suffer great and irreparable injury for which there is no adequate remedy at law.

Wherefore the plaintiff prays that the defendant company and all of its officers, directors, agents, servants, and employees be restrained and enjoined by this court from weighing any live stock not belonging to the defendant at said stockyard, which is sent thereto for sale, and from issuing any certificates of weight therefor, and from in any manner, preventing, obstructing, or interfering with the State weighers in the weighing of live stock at said stock yards, and from preventing or attempting to prevent, in any respect, full compliance with the provisions of chapter 40, special session laws of 1919, and for such other and further relief as may be just and equitable.

CLIFFORD L. HILTON,
Attorney General.

HENRY C. FLANNERY,
Assistant Attorney General, Attorney for the Plaintiff,
State Capitol, St. Paul, Minn.

STATE OF MINNESOTA,
County of Ramsey, ss.

Clifford L. Hilton, being duly sworn, says that he is the attorney general of the State of Minnesota, that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge and belief, except as to matters therein contained which are stated on information and belief, and as to those matters he believes them to be true.

CLIFFORD L. HILTON.

Subscribed and sworn to before me this 9th day of February, 1922.

[SEAL.] G. K. SPANGENBERG,
Notary Public, Ramsey County, Minn.

My commission expires March 11, 1922.

District Court, First Judicial District. State of Minnesota *v.* Wood, Weiler Co. (Inc.); Rogers & Rogers; Oakley Fitch, doing business as Fitch & Co.; Geo. G. Robinson & Co.; T. F. Joyce and John W. Joyce, copartners doing business as Joyce Commission Co.; Walter R. Sheldon and E. D. Walters, doing business as Lee Live Stock Commission Co.; Western Commission Co., a corporation; Long & Hansen Co., a corporation; F. S. Page & Co., a corporation; Smith-Forsyth Co.; Bruber, Rude & Johnson; John F. Bennett, doing business as Bennett Commission Co.; United Commission Co.; McKissick, Alcorn, Magnus & Co.; Dennistoun & Herring Co.; C. F. Kaye, C. L. Kaye, and H. L. Kaye, doing business as C. L. Kaye & Sons; Carl M. Engemoen and I. L. Seekins, copartners doing business as Engemoen Seekins Co.; Conrad L. Kuckler, H. A. Gauthier, and H. M. Bayne, copartners doing business as the Farmers Commission Co.; J. E. Gibbons and J. E. Carnes, copartners doing business as Gibbons & Carnes; Wm. Thuet and E. J. Cleary, copartners doing business as Thuet Bros.; John E. Wilson, H. Krasinsky, and J. F. Hurley, copartners doing business as The Independent Commission Co.; W. H. Smith, J. B. Messner, and B. J. Burrows, doing business as Smith, Burrows & Co.; W. M. Campbell Co.; American Commission Co., a corporation; Clay Robinson & Co. (Inc.); Drovers Live Stock Commission Co.; The Haas Commission Co.; J. R. Kirk Commission Co. (Inc.); Prouty Commission Co.; Rogers Amundson Flynn Co.; South St. Paul Commission Co.; Percy Vittum & Co.; Kay Wood and Charles Wood, copartners doing business as Wood Bros.; Friend, Crosby & Co.

The above entitled matter came on for hearing before the undersigned at Hastings, Minn. on the 4th day of May, 1920, upon an appeal from an order of the railroad and warehouse commission, under date of January 5, 1920, which order fixed and established a certain schedule of charges as reasonable and such as might be made by any live-stock commission merchant at any public stockyards in this State, and was made pursuant to provisions of section 3, chapter 39 of the special session laws of Minnesota for 1919. Moore, Oppenheimer & Peterson, Esq., of St. Paul, appeared in behalf of said appellants; and Henry C. Flannery, Esq., of St. Paul, Assistant Attorney General appeared in behalf of the State.

Testimony was taken in behalf of the appellants, and the matter was finally submitted upon written briefs, on the 4th day of August, 1920; and now, to-wit, this 16th day of August, 1920, the court having duly considered the matter, it is hereby determined and

Ordered that said order of the railroad and warehouse commission herein appealed from be, and the same hereby is, vacated and set aside, on the ground that the jurisdiction of the State of Minnesota to fix or regulate charges of live-stock commission men operating at any public stockyards in this State is suspended and superseded by reason of the present occupancy of that field by the Federal Government.

A stay of 40 days is hereby directed.

Dated August 16, 1920.

WILLARD L. CONVERSE,
District Judge.

See memorandum attached to Doc. 15731 State *v.* Rogers & Rogers. Copy office of the clerk of district court, Dakota County, Minn. Filed August 18, 1920.

F. S. RYAN, *Clerk.*

MEMORANDUM.

It is contended that the order appealed from in this case is invalid for two reasons: First, because it is an attempt to exercise jurisdiction over a field which at the time the order was made was, and still is, occupied by the Federal Government; second, because the legislative act under which the commission acted in making the order is invalid and unconstitutional in so far as it interferes with the right of the commission men to fix their own charges.

This order is based solely upon the ground of the first objection.

The rule that where Congress takes legislative possession and control of any field of industrial or commercial activity, it is then outside the power of the State to enact any legislation that tends to interfere with such control by the Congress, is too well known to need citation of authorities. It is the opinion of the court that such rule is applicable to the situation here presented.

That Congress has power under the Federal Constitution "To provise for the common defense * * * to declare war * * * to raise and support armies * * * to provide and maintain a navy" and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

Under the foregoing constitutional authority the Congress was clearly acting within the scope of its power when it enacted the food control act, sometimes called the Lever

Act, approved August 10, 1917. This act was amended October 22, 1919, but its effect so far as relates to this case was probably not changed. The act provides, among other things, that all "foods, feeds, etc.," called necessaries, and all equipment required for their production and distribution are placed under the control of the administrative branch of the Government. The President is authorized to "license the importation, manufacture, storage, mining or distribution of any necessaries," and all persons are forbidden to engage in any of those occupations for which a license is required, unless they are so licensed. The act also provides that "the President may, in lieu of any such unjust, unreasonable, discriminatory, and unfair storage charge, commission, profit, or practice, find what is a just, reasonable, nondiscriminatory, and fair storage charge, commission, profit, or practice, and in any proceeding brought in any court, such order of the President shall be prima facie evidence."

By virtue of that authority conferred upon the President in this act, this appellant has become a licensee of the Federal Government, and the President has, by an order dated November 27, 1917, in accordance with the provisions of the Lever Act, above set forth, actually determined what shall constitute a just, fair, and reasonable profit for this appellant. The order, so far as here pertinent, is as follows:

"I hereby authorize and direct the United States Food Administrator in prescribing regulations for licensees under section 5 of the act of Congress approved August 10, 1917, * * * to find that a just, reasonable, and fair profit is the normal average profit which persons engaged in the same business and place obtained prior to July 1, 1914, under free, open conditions: to indicate, if he shall see fit to do so, what margin over cost will return such a just, reasonable, and fair profit and to take such legal steps as are authorized by said act to prohibit the taking of any greater profit."

It seems too clear for controversy that the authority of said Railroad and Warehouse Commission, in making the order appealed from, and the authority of the President, in making the foregoing order, can not both be exercised in harmony. One of them must give way to the other.

The only difficult question for me in this matter has been as to whether the word "food" as used in the Lever Act is intended to include live stock. I have reached the conclusion that the Congress used that word in its broadest possible sense, and intended by this act to mobilize the entire food producing cpapcity of our country. I have reached this conclusion not only from study of the act itself, but from other sources, including the debates in Congress at the time of its enactment. I am fortified in this determination by two decisions of the United States District Court, to which attention is now called. In Kuenster *v.* Meredith, 264 Fed. Rep. 243, it appears that the plaintiff was a live stock commission merchant at Chicago, and a licensee of the Federal Government. An attempt was made to revoke his license, and he brought this action to restrain the Secretary of Agriculture from so doing. The question in the case at bar was not at issue in the Kuenster case, but seems to be assumed, as shown by this quotation from the opinion of Judge Sanborn, "To state the case briefly: The food control act made the live stock commission business at the Chicago stock yards unlawful unless licensed by the Secretary of Agriculture. There is nothing in the statute, the President's proclamation, or the rules and regulations expressly making the license revocable. But these stock yards licenses themselves expressly provide that each one is subject to revocation for violation by the licenses of any provision of the statute or regulations. The power to revoke is of course implied. Plaintiff admits the reservation is valid."

United States *v.* Reliable Credit Clothing Co., (Inc.) (264 Fed. Rep, 453.) the court had under consideration a demurrer to an indictment wherein the defendant was charged with making unjust, unreasonable charges for necessaries. One of the grounds of the demurrer was that the President had power to fix the price of necessaries and omitted to do so, and that the defendant could not be prosecuted for unjust or unreasonable charges until the just and reasonable prices had been first determined and fixed by the President.

CONVERSE, *Judge.*

Mr. MORRILL. And I may say, as showing my own disposition about this matter of harmony with the State officials, without reference to their power to regulate, that I said at the conclusion of my memorandum to the Secretary of Agriculture, based upon the opinion of our counsel:

"Of course, it does not follow, as intimated by some, that the assumption of Federal jurisdiction over these yards would mean a return to improper conditions that may have existed prior to State supervision, nor is the assumption of such jurisdiction to be regarded as uncomplimentary to the State with respect to its supervision.

"We shall, of course, be very glad if the State authorities will work with us in any way possible, so that we may have the assurance that when any questions arise under Federal supervision the State's interests will be represented adequately."

Now, of course, in attempting to work out the proper administration of the packers and stockyards act there must be recognized the fact that it was passed as a national law for the protection of shippers and consumers and of the public generally, and that there is involved in the enforcement of that law the question of adequate service rendered properly and in a reasonable way, and the question of the cost of that service, because it was the expectation of Congress that in some way the Secretary of Agriculture would find it possible to bring about more efficient marketing conditions at a reduced cost to both producers and consumers. And the bill before you deals with two of the items of that cost. There are a great many more items, but the bill before you takes away from the Secretary of Agriculture the power to deal with those two items. The one is the weighing, and the charge as proposed here is manifestly in excess of the actual cost of weighing, and even if it were not in excess of the present cost to the State, there is no means provided by which the Secretary of Agriculture can do anything to lessen the cost.

Now, with respect to the matter of bonds.

Our position in the matter is that we want to do everything possible to see that the shipper is given the assurance that he will get back every dollar the commission man collects on his behalf, and that we are not satisfied that the bond is a sufficient protection. I do not question the desirability of a bond. In fact, probably in working out our policies we will have to require a bond, but we do not feel that we can safely stop at that point.

Mr. TINCHER. A bond is in the nature of a note, when what a man really wants is his cash.

Mr. MORRILL. Yes; and it is after the accident instead of before. What we are trying to do is to find some way to prevent the accident and make the use of the bond unnecessary even though you have the bond.

Under the State law as it now exists the State railroad and warehouse commission is required to execute a $20,000 bond, and under that law it expressly says that a commission man can not do business in those yards without executing that bond to the State—absolutely a regulation of interstate commerce. Under the packers and stockyards act he is allowed to do business if he registers with the Secretary of Agriculture. Suppose he is registered with the Secretary of Agriculture. The State comes along and says, "Unless you execute this $20,000 bond to the State you can not do business, no matter if you have complied with the Federal regulations."

As a matter of fact, I am not at all satisfied that a $20,000 bond is adequate. It is not adequate in some of the other markets, and I am not sure whether it has been adequate at all times in St. Paul.

Here is another question, and that is the form in which that bond is made, whether the form of the bond is adequate to protect the shipper. It has been reported to us by investigating committees of the exchanges that some of the bonds now in use—and I am not mentioning St. Paul—are not adequate protection to the shippers. We are trying to devise a plan that will most assuredly protect the shipper, and in that connection we have the question of whether the surety itself is adequate; that is to say, if it is a surety company. I notice that this bill provides that the State shall be allowed to execute a bond or other security. I do not know what that other security is; it leaves it open. Of course if the State requires a bond, the State will be the judge of whether the provision has been complied with, and that does not leave the Secretary of Agriculture any jurisdiction.

If I may be permitted to call attention to one or two other matters——

The CHAIRMAN. Do you hold that you now have the power to require a bond from these commission men?

Mr. MORRILL. That is my opinion; yes, sir.

In considering this matter we have to consider the fact that this bill deals with two of the items of cost and of service furnished by stockyards companies and commission men in the yards. There are a great many stockyards. Referring to the principle that has been enunciated here, why should the State be given the power to require these two matters and not in a great many others that are at least as important, and some of them much more important? Why should it be divided, as a matter of fact, so that the State supervises two things, or rather actually renders the service in two cases, while the Federal Government does the rest of it?

It might be mentioned in this connection, as I beleieve it has already been stated, that these scales in this yard at South St. Paul belong to the stockyards company. They are owned by the stockyards company. They are maintained by the stockyards company. The State does not pay the expenses of making repairs. What actually happens is that the State puts its employees on the scales and collects a charge for the service of those employees. Now, is that necessary? That is the question that your committee will have to decide. Of course, if your committee decides that the weigh-

ing must be done by either State or Federal employees, the Secretary of Agriculture will be very glad to acquiesce.

The CHAIRMAN. Are any charges made by the stockyards company for weighing?

Mr. MORRILL. In no case that I know of does the stockyards company make a special charge for weighing. In no case that I know of is there a special charge for weighing in any one yard in the country. And I know of no case where the State does the weighing in any yard outside of South St. Paul.

The present method of assessing charges is to make a charge for yardage or for feed, or for both, as a means of maintaining the yards, including all expenses.

The CHAIRMAN. Can you tell us what the situation was at Chicago before you took control?

Mr. MORRILL. There was no State weighing there.

The CHAIRMAN. They have a warehouse commission?

Mr. MORRILL. Yes; of course they have a State warehouse commission, but so far as I know they took no active supervision over the yards as such.

The CHAIRMAN. They did as to grain, did they not?

Mr. MORRILL. I had occasion to look into that in connection with the grain exchanges. The State has a law, passed in 1912, providing for a State weighing service, just like the State inspection law, but the State never has put in any weighing service. The reason why the Chicago Board of Trade does the weighing for deliveries of grain on future contracts in Chicago is because the State law has never been enforced, never been carried out.

Of course it must be borne in mind that if the State of Minnesota continues to operate under a mandatory law requiring State weighing, with State weighers at the scales, making charges for it in the discretion of the Railroad and Warehouse Commission, every other State can do likewise, and it is perfectly manifest that the ability of the Secretary of Agriculture, notwithstanding any disposition on the part of the parties involved, will be somewhat impaired, to accomplish anything in the way of a reduction in cost.

I want to make one further point in that connection. The tendency of such a bill as this is to make it possible for stockyards companies to conceive the idea of establishing separate weighing agencies for the purpose of maintaining a separate weighing service and making a charge for that, which of course duplicates the number of agencies we have to supervise.

The CHAIRMAN. In your opinion, have you the power now to license them, or would it require a special provision?

Mr. MORRILL. In connection with the supervision of the weighers of the stockyards companies, we are working out our plans now, and I contemplate that we will expect to require—leaving the St. Paul situation aside for the moment and speaking generally—we will expect to require that no weigher be permitted to operate scales in a stockyards whose qualifications do not meet the approval of the Department of Agriculture, through its proper representatives, and that no such weigher shall be allowed to continue to weigh after he has been disapproved. And we shall probably go further than that and do the same thing with reference to the scales and other things connected with the yards.

The CHAIRMAN. You have the power to do that, to prescribe who shall do the weighing—disinterested parties?

Mr. MORRILL. That will, of course, depend upon whether the parties who are doing the weighing do it properly. As has been stated here, any time we find out that a party who is doing the weighing is not doing it properly we have the power to order the discontinuance of the employment of that person.

The CHAIRMAN. I am not asking about that, but could you exercise that power in advance. Could you license the weighers, for instance, or would it require a specific provision for that?

Mr. MORRILL. Of course what I have proposed here amounts to the same things as licensing the weighers.

The CHAIRMAN. We do license inspectors, for instance. The act provides for that. Would it be necessary to specifically provide for it in this case, to give you the authority to license?

Mr. MORRILL. If you are thinking in terms of dealing directly with the weigher himself and giving him a license and terminating his license, I am not sure about that, but I do know we have adequate power to see that no person is employed by the stockyards company who is not an acceptable person for that employment.

The CHAIRMAN. Now, what about the employees? Could you employ one of these people here for the nominal salary of $1 a year and make him a weigher?

Mr. MORRILL. If it appeared to be desirable to do that—answering your question as to our authority—we could employ Mr. Thompson, assuming that he wants to enter our employment, at $1 a year.

The CHAIRMAN. And in that way the whole thing could be accomplished, just what is contended for here, could it not?

Mr. MORRILL. I could not answer that, and I refer to the utilization of the supervisory agencies. That is the question that has been presented to us.

Mr. RAINEY. A question of conflict of authority.

The CHAIRMAN. You mean that with reference to the utilization of this particular activity or agency you would accomplish it by employing them at a nominal salary?

Mr. MORRILL. Certainly, to carry out the provisions of the packers and stockyards act; yes.

The CHAIRMAN. And it would not require any additional legislation?

Mr. MORRILL. Not so far as carrying out the provisions of the packers and stockyards act is concerned.

The CHAIRMAN. And in that way the very thing can be accomplished that is being accomplished now, provided you would agree to that arrangement?

Mr. MORRILL. But what they have wanted us to do is to recognize the validity and force of their present State laws. As was stated by Mr. Bowen, he said he could not undertake to say what they would do with reference to changes in the laws.

Mr. BOWEN. No; I say that in many respects many of our laws are over ridden by the Federal laws.

The CHAIRMAN. Well, Mr. Morrill suggests that you have jurisdiction over intrastate shippers.

Mr. BOWEN. But there is no such thing.

The CHAIRMAN. There are a few. You had jurisdiction over that, and what you are contending for now is jurisdiction over what the court has decided you do not have jurisdiction over, that is, interstate commerce.

Mr. BOWEN. We do not contend for jurisdiction over anything for which the packers act provides.

The CHAIRMAN. But having your force employed at a nominal salary would give you the jurisdiction you are contending for.

Mr. BOWEN. That is acceptable to us; we have made that offer to them.

The CHAIRMAN. I am just trying to find out what can be done if there is a disposition to do it. If it is desirable to do that thing it can be accomplished in that way.

Mr. RAINEY. That can only be ironed out by the Secretary of Agriculture. What he fears is dual authority, impairing the functioning of the packer control act.

The CHAIRMAN. But doing it that way there would be no dual authority; they would do it through Federal Government agencies. You could accomplish exactly the same thing. It seems to me that this matter can be settled between the State and Federal authority, and I take it that in time you will have this matter ironed out and come to a clear understanding of what is desired.

Mr. BOWEN. We recognize the supreme authority of the Secretary of Agriculture. There is no dispute about that.

The CHAIRMAN. Of course we all recognize that.

Mr. WELLS. The only thing is the question of whether the department is willing to cooperate with us.

The CHAIRMAN. I think everybody in the country has confidence in the Secretary. I believe he wants to do the very best he can; he wants to do the right thing. We have confidence in Mr. Morrill. Of course this is a big proposition, and there are a great many things to be taken into consideration. He must carry out the spirit of the law. I am sure that is his purpose. That is what Congress wants him to do. That is what the people want him to do.

This question can not be settled overnight. The department has not had an opportunity to work out all these details, and it must have time. We all feel the same interest in the matter and we want what is for the best interest of all concerned. We want justice all along the line. I have confidence in the department, I have confidence in Mr. Morrill, and I know that the act will do the trick. All that is needed is to give them time to work it out, and I am sure it will result to the entire satisfaction of all concerned. If it appears that it is not possible to have these things worked out satisfactorily, then it might be necessary in the course of time to amend the act. But after listening to the arguments of both sides I am satisfied that there is a disposition and a desire to do it, and it can be accomplished. As I told you the very first day, I think you had better settle it out of court.

Mr. WELLS. In connection with that I should like to take just a moment, if Mr. Morrill will give way. I think Mr. Morrill will bear out my statement. At your suggestion I asked Mr. Morrill if they were willing to sit down at a table, put all the cards on the table, and talk it over, and see if we could not arrive at a friendly understanding.

The CHAIRMAN. I can answer for Mr. Morrill myself. I think he would be willing to do that. We had your grain matter up here, and the Secretary met you halfway. He went out there and investigated the matter and brought all those people together. I feel certain that he wants to do the same thing in this matter.

Mr. WELLS. The question was this, then. He said this matter was before the committee, and I said to him, "Waive that matter, let it stand aside; and let us take this up and see if we can not talk it over and compromise it." "Well," he said, "if you have any concrete suggestion that you want to submit, submit it to the Secretary, and I think he will hear you, and he will render his opinion on it after due time, after digesting it and analyzing it."

The CHAIRMAN. Oh, I think he will do that. I do not think there will be any trouble about that. The department has so many things to deal with. They have the packers and the stockyards; they have the shippers, and they have the State authorities and all those things to deal with. They can not decide this in a moment; it takes time to iron those things out, and you have not given them a chance. They have not had a chance to discuss it. It can not be settled overnight.

Now, you have come here. You have no complaint to make regarding the department. You have no grievance except that you insist upon your State right. Well, we are all more or less States rights people; I am as much as anybody else. I want to give you all the authority possible, but you must take into consideration also the other States. Where you have jurisdiction over the State of Minnesota, you have not over Iowa. Iowa is just as much interested as you are in St. Paul yards. If you could add to the service and to the safeguards we would welcome that, but we think it ought to be by cooperation.

Mr. WELLS. But Mr. Morrill has pointed out to you, as I understand it, the absolute impossibility of doing anything with it so far.

The CHAIRMAN. No; he has not. He says there is a way of doing it. Here is this question of licensing, and this question of employing. If you were employed by the Government you would be honored by having a commission from the Federal Government. In States we have a number of people that hold commissions from the Government working at a dollar a year. Veterinarians out there are working for the Bureau of Animal Industry. The Government had to cooperate with the State in a number of instances. The Federal agencies had to cooperate. That was the only way to accomplish the results desired, and it will probably be necessary to do it in this case. For instance, in the matter of the foot-and-mouth disease, the Federal authorities had no power to go into the States and establish a quarantine; they had to go to the State authorities, and in cooperation with them they accomplished exactly what was desired.

Mr. WELLS. As I understand Mr. Morrill's statement, his position is that we may cooperate to that extent, and we may file complaints with the department, and that is the end of it. Am I right in that, Mr. Morrill?

Mr. MORRILL. Of course, stating it as you do, it sounds pretty narrow. As a matter of fact, it seems to me that what you are insisting we should do is to use the State weighers under the State law and exclude any other class of weighers from the scales of the stockyards companies. Is that true or not? Is not that the specific question that is before us?

Mr. WELLS. Of course, that is the question that is on the table for this committee to determine. The question now is whether you are willing to cooperate with the State in the absence of this amendment.

Mr. MORRILL. Does that mean that we should turn over to the State the enforcement of State laws applying to interstate commerce?

Mr. WELLS. No. We are asking you just how far you are willing to go.

Mr. MORRILL. I have stated my position in the matter throughout the hearing, and that is that if the State wishes to test these scales, if it wishes to keep you in the yards, and if it wishes to keep its inspectors in the yards and keep a humane society representative in the yards that is entirely right and proper so far as we are concerned. But when it comes to the question of enforcing a law requiring the use of State weighers on the scales and the railroad and warehouse commission fixing the rate, I think you have a different question.

Mr. BOWEN. We have no power to fix the rate with the Federal stockyards act in effect. You have the power to fix the rates, the same as for stockyards services.

Mr. MORRILL. If that is the case, it goes back to the question whether we have the right to regulate a State agency which is working under an invalid law.

The CHAIRMAN. I think it is fair to state that Mr. Morrill does not want to commit himself on these questions in advance. What I am trying to find out is whether there is some way by which this can be worked out if it is thought desirable to do so. I take

it Mr. Morrill would want to confer with the Secretary. What I am trying to find out is whether there is any way of bringing about what you people want.

Mr. RAINEY. Very readily, because the Secretary of Agriculture has authority to do everything that the people of South St. Paul want done. The only thing he wishes to reserve for himself is his authority wherever there is conflict with the State authority. He does not want the State to usurp the authority, because there would be a dual authority. All the South St. Paul people need do is to suggest any abuses that are going on there and they will be corrected.

Mr. MORRILL. May I make this further statement? As Mr. Wells said, he has the privilege of making a concrete suggestion to the Secretary of Agriculture about the things that can or should be done. Aside from that, the reason why it is highly important that the regulatory authority be established and unquestioned is that the market agencies and dealers and stockyards companies and packers must know from what source they will receive orders and whose authority they must obey. There must not be any question about what authority they must obey when they get orders.

The CHAIRMAN. But if you find the State or any other agency makes exorbitant charges, you have the power to regulate that?

Mr. MORRILL. I am not prepared to say that we have authority to regulate the State.

The CHAIRMAN. Any charge that is made in connection with it. You are not dealing with them as a State but as an individual.

Mr. MORRILL. That is the point. It is the State that is doing this weighing and collecting the charge for it. In other words, we have not the authority to regulate the charges of the State. We have authority to regulate charges on certain items between market agents and dealers. The question is whether the State is to be termed a "market agency" within the meaning of this law.

Mr. WELLS. If the bill were amended to make it a market agency, that would correct it.

Mr. MORRILL. It would be in the discretion of Congress to do that.

The CHAIRMAN. I hardly think you would want that done, Mr. Wells. You had better think that over before you accept that amendment.

Mr. WELLS. Mr. Chairman, I just want to make a statement in regard to the resolutions from Butte, presented by Mr. Morrill. The live-stock exchange and the stockyards company sent a representative from each one of those organizations to Butte for the purpose of getting these resolutions.

For three years, gentlemen, there has been an organized propaganda by the live-stock exchange, backed by the stockyards company, to defeat the State on every proposition. Now you have the spectacle at South St. Paul of the exchange there filing a schedule with the Governement protesting your law, and they have spent thousands and thousands of dollars sending emissaries throughout the different States to get a feeling worked up against State operation there.

Now, let us see what success they have had after all that time. In connection with that—I do not know whether it is true or not, but I do know that petitions have been circulating around in the yards, presumably to go to the Secretary, signed by stockyards men, speculators, and everybody else, and shippers, if they could get them. I do not know whether that has been filed or not.

I want to read to you something from the South St. Paul Reporter, which is owned by the packing interests:

"Representatives from this market who attended the meeting of the Montana Stockgrowers' Association at Butte brought back a copy of a resolution adopted at the meeting protesting against the weighing charges assessed against Montana shippers patronizing this market. The resolution has been sent to Henry Wallace, United States Secretary of Agriculture, in Washington, and makes the fourth such protest made to the Secretary from States tributary to this market."

In other words, after three years' active propaganda they have been able to get a protest from four States. Who are they? They say:

"Wisconsin made complaint to Secretary Wallace through a prominent shipper."

One shipper from the State of Wisconsin. [Reading:]

"South Dakota shippers, represented by a State inspector at Sioux Falls, also made complaint."

I do not know what that means; he is certainly not a shipper of live stock. [Reading:]

"North Dakota shippers were represented by one of the largest range outfits."

That shows the result of three years' propaganda. They have not got one complaint from a shipper, a real shipper of live stock, from the State of Minnesota on file.

The CHAIRMAN. I have a letter here from Mr. H. K. Bush-Brown. He was invited, I think, to appear before the committee, and later it was suggested that he file a state-

ment with the committee about the Mount Weather proposition. Might it not be incorporated in this record? [No response.] Without objection, it is so ordered.

(The letter referred to is here printed in full, as follows:)

WASHINGTON, D. C., *April 28, 1922.*

Hon. GILBERT N. HAUGEN,
Chairman Committee on Agriculture, Washington, D. C.

DEAR SIR: On June 10, 1921, there was a hearing before your committee for the Soldiers Institute, which had recently been incorporated, and we asked for the temporary use of the Government property at Bluemont, Va., known as Mount Weather.

Since then, by act of Congress the Veterans' Bureau was established, reorganizing the rehabilitation work of the Government. We have delayed the activities of the Soldiers Institute in order in no way to interfere with any plans of the Veterans' Bureau, or to assume any duties of the Government in regard to the soldiers.

I think it is now quite sufficiently demonstrated that there is a service which a civil organization can perform supplementary to the work of the Government, and it is this service that the Soldiers Institute is now ready to render. It was outlined in our hearings, above mentioned, the principal feature of which is to care for that intable interval between the hospital and the full ability to do a man's work and to obtain employment for the veterans who have no other demands on the public than an opportunity to be self-supporting.

During the past year we have built up a national organization and have recently elected to our board Mrs. George W. Plummer, of Chicago, and Mrs. John N. Speer, of Washington, representing the General Federation of Women's Clubs; Mr. Robert B. Weller, representing the American Legion; and Mr. Arthur D. Call, recently a director of the Y. M. C. A. At our next meeting we expect to add representatives from the Knights of Columbus, the Carry On Club, the Lest We Forget Club, and so bring together in the management of the Soldiers Institute or on its council of advice all the organizations now working separately for helping the veterans in need of any assistance.

The Daughters of the American Revolution indorsed the Soldiers Institute at their convention last year and asked me to speak at the convention just closed.

One of our board has recently put at our disposal 300 acres of land on the Potomac below Mount Vernon, and the Secretary of War and the Secretary of the Navy have agreed to help in every way our project to establish there a summer camp for the soldiers now in the hospitals in Washington.

On April 25, a committee of the Soldiers Institute were guests of the Secretary of War and the Secretary of Navy and we inspected this property, which is situated near Dahlgren, Va.

Col. Paul C. Hutton had charge of the expedition, representing Surgeon General Ireland. The other officials were Lieut. W. J. C. Agnew, representing Admiral Stitts, Surgeon General of the Navy; Col. Alex. E. Williams, representing General Rogers, Quartermaster General; and Maj. Stuart C. Godfrey, of the Engineer Corps.

We were assisted in our inspection by Commander B. N. Green and Capt. J. W. Greenslade, of Dahlgren Proving Station.

It is our intention to establish a camp near to Washington as a try-out place for a permanent home for this institute in a mountain section with high altitude and pure air. The Mount Weather property is quite adapted to our purpose, and we renew our application for its temporary use.

In order to raise funds to carry out our plans we have arranged two concerts to be given in the National Theater May 2 and 5. Several distinguished artists have donated their talents and the owners of the theater have donated the use of the building. The Navy Department have arranged to have the concert sent broadcast by radio, so that everyone who has a radio receiver may listen to it. This is the beginning of a national campaign to raise the necessary funds to carry on the work of the Soldiers Institute, and by the bringing together of the many organizations mentioned above we now have behind this organization many million people who are experienced workers for the building up of that cooperative brotherhood so well expressed by the Red Cross. The Soldiers Institute has a similar work to do, and we beg that your committee will show its spirit of cooperation by reporting favorably the bill to allow us to use Mount Weather until such time as the Government may have use for it.

Respectfully yours,

H. K. BUSH-BROWN.

The CHAIRMAN. I have a communication from the Department of Agriculture with reference to the bill to regulate the importation of honeybees. It suggests as an

amendment that we incorporate the words "in which the Secretary of Agricul shall determine that no disease dangerous to," and so forth. Does the commi authorize that amendment?

Mr. CLAGUE. I move the amendment be adopted.

Mr. SINCLAIR. I second that amendment.

(The amendment was, without objection, agreed to.)

The CHAIRMAN. Have you finished, Mr. Morrill?

Mr. MORRILL. Yes, sir; I think I am through.

The CHAIRMAN. I believe that concludes the hearing, then.

Mr. CLAGUE. Yes; that is all.

The CHAIRMAN. Without objection, then, the hearing will be closed on t particular bill.

(Whereupon, at 1.20 o'clock p. m., the committee adjourned.)

MISSISSIPPI FLOOD RELIEF

HEARINGS

BEFORE THE

COMMITTEE ON AGRICULTURE

HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS

SECOND SESSION

MAY 2, 1922

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HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS.

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MISSISSIPPI FLOOD RELIEF.

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Tuesday, May 2, 1922.

The committee met at 10.30 o'clock a. m., Hon. Gilbert N. Haugen (chairman) presiding.

There were present: Mr. Haugen, Mr. McLaughlin of Michigan, Mr. Purnell, Mr. Voigt, Mr. McLaughlin of Nebraska, Mr. Tincher, Mr. Sinclair, Mr. Hays, Mr. Thompson, Mr. Clague, Mr. Clarke, Mr. Jacoway, Mr. Rainey, Mr. Aswell, Mr. Jones, and Mr. Ten Eyck.

The CHAIRMAN. Gentlemen, Mr. Denison, of Illinois, would like to make a request and if there is no objection we will first hear him.

STATEMENT OF HON. EDWARD E. DENISON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS.

Mr. DENISON. Mr. Chairman, I will not detain the committee but just a moment. I have filed a bill, H. R. 11452, which has been referred to the Committee on Agriculture, authorizing the Secretary of Agriculture to make advances or loans to the farmers in the overflowed section of the Mississippi and other valleys. I have been urged to do this by repeated appeals which have been coming to me from farmers' organizations in the different counties of my district in southern Illinois.

The water in the Mississippi has been the highest that has ever been known since the Mississippi Valley was settled by white men. They have a record of the highest water ever known before in 1844, or 1854, I have forgotten which, but the floods this time reached a considerably higher stage than was known at that time. Of course, the farms along the valley were protected by levees which everyone thought was sufficient to hold back the high waters, but they were unprepared for this extraordinary flood condition and the result has been that the levees have broken and the farmers in the bottom lands along the Mississippi River have been practically ruined. This applies also to some places in Missouri, but particularly, in my district in Illinois, because it just happens that the levees on the Missouri side held better and when they broke on the Illinois side that naturally relieved the levees on the Missouri side from such high pressure. This rich bottom land, the best land in southern Illinois, has been overflowed and I have three counties at least in which there are 100,000 acres under water in each county. The flood came so suddenly that they not only lost their crops but they lost their live stock as well. They had the best prospect for crops that they have had in years. They had no chance to get their live stock out and their stock was drowned and many of the farmers had their own houses washed away or ruined. The farmers in that part of our State live behind the levees and they had been taxed very heavily to build the levees and are badly in debt for that purpose. The levees, of course, will have to be repaired and so far as I can tell they are in a hopeless condition.

Mr. VOIGT. Were not these levees put there by the Government?

Mr. DENISON. No, sir; they were constructed by assessments against the farmers. Most of these levees were built before we passed the flood control act and that is the reason it happened that they were all constructed by local assessments against the farmers. When a levee is now built along the Mississippi River, under the flood control act, the Government contributes two-thirds, but these levees were all constructed by the individual farmers and they were splendid levees.

Mr. JONES. Has the Government never contributed anything toward the building of these levees?

Mr. DENISON. No; with the exception of just a little patch here and there where it has been necessary to rebuild some of the levees. Now, that is the situation just above Cairo. Below Cairo, of course, for years the Government has been contributing to the construction of the levees.

I have been getting letters and telegrams from representative citizens down there. The Red Cross has been giving assistance in cases of actual, physical suffering and feeding the people. They are living in tents on the high grounds. Some of the people were drowned, but, as a general rule, they had enough warning to get their families out and they got to the high ground and are now living there in tent colonies and being taken care of by the Red Cross. Bur the farmers, Mr. Chairman, down there have had crop failures for practically three years. They were not entire failures but practical failures, and then with the low prices they got for what they did raise they are in a serious financial condition and I can not tell, and there is no one who can tell, what they are going to do in order to live. As I have said, in three of my counties at least there are 100,000 acres under water.

They will have to raise money in some way to build these levees again and I do not know how they are going to do it. They do not know where they are going to get seed to replant their crops. They have not the money and they have not the facilities for borrowing it. They do not know how they are going to get this seed unless the Government comes to their relief, as the Government came to the relief of the farmers in the Northwest, and this bill is patterned after the bill which the Congress passed making loans to the farmers to help reseed their lands and put them back where they can raise a crop.

This is a serious situation and it is a situation that not only exists there but farther down the Mississippi River, on the Illinois River, and in other parts of the country. The bill is not limited to any section of the country but applies to every part of the country where the Secretary of Agriculture may find, by reason of recent emergencies or floods, that the people are in a suffering condition and need immediate help in order to reseed their land.

Mr. VOIGT. You say that 100,000 acres of land are now under water?

Mr. DENISON. In each of three of my counties.

Mr. VOIGT. Making a total of 300,000 acres under water.

Mr. DENISON. Yes, sir; or nearly that much.

The CHAIRMAN. Have you complete reports as to the area covered?

Mr. DENISON. Only such as have come to me in telegrams and letters which I have received and from what I have seen in the newspapers.

Mr. JONES. Has this matter ever been submitted to the Secretary of Agriculture?

Mr. DENISON. I have taken it up with him personally, and he said he felt it was a serious condition and he would help us in every way he could.

Mr. VOIGT. Do you expect that the Government is going to rebuild these levees?

Mr. DENISON. I expect that in the rebuilding of the levees the Government, under the flood control act, will contribute two-thirds and the farmers one-third.

Mr. TINCHER. I notice that this bill calls for an appropriation of $1,000,000. If the conditions are as bad as you state, that amount would not go very far, would it?

Mr. DENISON. It will go that far and help that much. I do not know whether that is enough or not.

Mr. CLARKE. What is the estimate of $1,000,000 based on? Is there any tangible basis for it?

Mr. DENISON. I have conferred with a number of other Members of the House and with some of the Senators who represent the overflowed districts and we are asking for that amount as the best estimate we can make. Of course, the Secretary of Agriculture, under the bill, would not use any more than he found was necessary, and he is given absolute discretion, and he told me, in a personal conversation, that he could send some good men out there and investigate conditions and make loans where he found them absolutely necessary, just as he did among the farmers in the Dakotas and in the Northwest, where we authorized that to be done, under a law we passed last spring. It is the tenant farmer, largely, who is seriously hurt.

Mr. CLARKE. Most of this ground that is flooded is land that is being cultivated?

Mr. DENISON. Oh, yes; it is fine farm land and was in alfalfa, wheat, and corn.

The CHAIRMAN. How much money was spent under the other act?

Mr. DENISON. The last act we passed was for $1,500,000.

The CHAIRMAN. I have reference to the flood relief bill which was passed some years ago.

Mr. DENISON. I do not remember.

The CHAIRMAN. I think we have a report here from the department on that.

Mr. DENISON. I do not remember about that.

Mr. TINCHER. We have had this subject up before the committee a good many times, as you say, and I do not think there is any portion of the membership of the committee that would stand back on authorizing the Secretary of Agriculture to loan $1,000,000 of Government funds to help these people.

Mr. VOIGT. How high are these levees up above the land.

Mr. DENISON. The land that is overflowed is what is called the first and second bottom land of the Mississippi Valley which runs from 2 to 5 miles back from the river to the hills. It is the finest land in the State. It could never be occupied except under the protection of the levees and the levees run as high as 15 feet and 20 feet, in some places.

Mr. VOIGT. Will they have to be entirely reconstructed or just certain portions of them.

Mr. DENISON. They have just washed out where the break occurred. When the people there saw this extraordinary amount of water coming down, every man was summoned to the levees and night and day for weeks they worked piling up sandbags and they held several feet of water above the top of the levees by sandbags working day and night. Every able-bodied man in the community was on top of those levees piling sandbags to hold back the water. It is remarkable the way they held the water back but finally a break came and then it came with a rush, and the people had no opportunity to do anything further. They simply got their families out, but their stock was drowned and a great many of their homes were washed away.

Mr. PURNELL. Mr. Denison, you may have answered this question before I came in, but I would like to ask the size of the area flooded.

Mr. DENISON. I can only speak for three of my counties along the Mississippi River. There are about 100,000 acres under water in each one of those counties, estimated, and in some places the water went up over the housetops.

Mr. VOIGT. Are there similar conditions in other counties or in other States?

Mr. DENISON. Down in Louisiana there is a very bad break and I understand there are several hundred thousand acres under water. I went down there with the Flood Control Committee at the time of the last high water and saw the conditions down there and I know that the conditions there must be very serious. The people had their families crowded upon the levee and were living upon the levee, which was the only land above water for miles around. Mr. Wilson, of Louisiana, who represents that district is now down there, with a committee of the House, to examine conditions, and is therefore not able to be here to speak for his people, but I know there is a serious condition there just as there is in Illinois.

Mr. JONES. Is there not a committee of Members of the House and Senators down there now looking over the situation?

Mr. DENISON. Yes, sir; there is a committee that went from here to Memphis and then on south to Vicksburg, composed of quite a number of Representatives and Senators.

Mr. JONES. Do you not think it would be better to wait——

Mr. CLARKE (interposing.) Would it not be better to wait until we have a report from them?

Mr. JONES. I was just going to ask that question.

Mr. DENISON. Of course, I will be glad to abide by the judgment of this committee, but they will, of course, examine conditions south of Memphis but will not be up in the district north of there.

Mr. SINCLAIR. I would suggest, Mr. Denison, that if you wait very long the aid will not do the people in your district very much good so far as this year's cropping is concerned.

Mr. DENISON. No. The reason they went down there is because the flood is now beginning to recede as far north as Cairo but is rising down farther south, and they went down there to view the crest of the flood below.

Mr. CLARKE. What is to prevent you from at once getting in telegraphic communication with them so that we will not follow a hit-or-miss policy here in extending aid? You, of course, can give us only a partial picture of the conditions and perhaps tomorrow we will have a supplementary report and surely a day or two of delay is not going to make any material difference.

Mr. DENISON. As I say, I will be glad to abide by the judgment of the committee, except I know that as the waters go down there will be a serious condition down there.

Mr. CLARKE. Do you not think, as a practical suggestion, it would be better to get in touch with the people who are now investigating the matter so that we can have all the facts available before us?

Mr. DENISON. I think that is a very good suggestion.

The CHAIRMAN. I have understood that the department has quite complete reports about the matter and I take it we can have the department come before us at any time.

Mr. CLARKE. I suggest then we proceed to do that as promptly as possible.

The CHAIRMAN. Your desire is to have the bill reported as soon as possible, Mr. Denison?

Mr. DENISON. Yes.

Mr. TINCHER. So far as I am concerned, in a matter of this kind, I do not think the Government ever makes a mistake and I would be willing to report the bill, and if it should be disclosed later on that there should be some amendments made, we could take care of that later on. As far as I am concerned, I do not want to be in the position on this committee of holding back any assistance that is proper for the Government to give these people under these circumstances at any time.

Mr. CLARKE. I am not in that position either, but I am in the position of thinking that a day or two of delay will not do any material harm if we can get further evidence about the matter.

Mr. TINCHER. Of course, we all know the situation down there pretty well and the Secretary of Agriculture knows the situation.

Mr. DENISON. Gentlemen, let me make this concluding statement. I do not think these people, especially the people I represent, have ever asked for help before, but it just happens that there has been a combination of circumstances that is very distressing. For instance, they have had crop failures for two or three years, and then the depressed prices of farm products have been such that they have not been able to pay their farming expenses and they are in debt to the local banks so heavily that they can not go and get further help. That is the situation.

Mr. CLARKE. You do not think a day or two of delay is going to make any difference if we can get additional facts about the matter.

Mr. PURNELL. Mr. Clarke, do you not feel that what has happened has already happened and any flood control committee that may go down there can not change the actual conditions.

Mr. CLARKE. They are down there now.

Mr. PURNELL. I know they are down there, but what can they do to help this condition. They can only come back and report something with reference to future conditions.

Mr. CLAGUE. What are the crops produced on this land.

Mr. DENISON. Alfalfa, wheat, and corn.

Mr. PURNELL. The water is already all over this land and we know that. It does not take a committee to find out about that and these people are suffering, and I am like Brother Tincher in reference to the matter.

Mr. CLAGUE. I feel like Mr. Tincher about the matter. We have reported out other bills of a similar character and these people need help now.

Mr. DENISON. I will say that when I drew up this bill I did it after consulting the men who represent the districts now being overflowed down there. It was known beforehand it would be practically impossible to hold these levees because this is a flood that has not been calculated upon. It is beyond anything we have ever had before. It is an extraordinary condition and hence it causes an extraordinary emergency.

Mr. JONES. It seems to me, regardless of the nature of this bill, if we could, by waiting a short time, get more definite information as to the amount needed, we might proceed without any great loss of time, to a little more intelligent action with reference to the proposition. We may find that a great deal more than this amount is needed or we may find that this is all that is needed because we may find no other sections requiring any great amount of monev; but the chances are that if we go ahead on this measure we will have to at least consider some other measures instead of having them all before us at once.

Mr. TINCHER. My judgment is that the psychological effect upon the people along that valley when they know that Congress is willing to help them and has authorized the Secretary of Agriculture to help them replant their crops will be very wholesome.

Mr. JONES. If we go ahead and appropriate $1,000,000 when it looks like that is just going to be a drop in the bucket, it seems to me it would have the reverse effect and show that we did not have any real sympathy for them.

Mr. DENISON. Of course it will be some few days before the Senate committee can consider it, and if we found that that was not sufficient the amount could be increased in the Senate.

Mr. SINCLAIR. You believe, Mr. Denison, that prompt action is one of the requisites in extending this aid, do you not?

Mr. DENISON. I do. The condition is that the farmers are now living in tents and being fed by the Red Cross and they have no live stock when they go back and their farms are ruined.

Mr. TEN EYCK. If they are going to reseed at all this spring, they will need the seed immediately, will they not?

Mr. DENISON. Yes; I have some letters from the directors of the farm bureaus down there saying that that is the situation.

Mr. TEN EYCK. It does appear to me that as we have taken care, along this line, of people in other parts of the country under ordinary conditions and of people in Russia, we ought to be able to act immediately or ought to be willing to act immediately in such an extraordinary condition.

Mr. JONES. I do not think there is anybody who would take issue with that statement at all.

Mr. CLARKE. As I understand it, the Secretary of Agriculture has already investigated it.

Mr. RAINEY. Why not refer it to the Department of Agriculture and ask the Secretary to expedite it.

Mr. TEN EYCK. But this money is to be loaned out by the Secretary of Agriculture. We do not hand it to them direct. He will investigate the matter and if they do not need any money he will not loan the money to them if he is a proper Secretary of Agriculture.

Mr. PURNELL. Mr. Chairman, in order to get something definite before the committee, I move that the bill be reported out.

Mr. VOIGT. Mr. Chairman, this bill includes live stock and my recollection is that in the bill which was reported some time ago the words live stock were stricken out. I have not any objection personally to leaving those words in, and the only question is whether we had better limit the bill to grain.

Mr. TEN EYCK. If live stock has been killed they ought to be replaced.

Mr. VOIGT. And out in North Dakota they all starved to death and there is no difference.

Mr. TINCHER. We let them have feed for their live stock.

Mr. CLARKE. Can we not obtain fuller information about this matter in an hour or two or in a short time from the department.

The CHAIRMAN. The report from the department is that it has but little information about it.

Mr. VOIGT. If there are some other areas flooded and the Government is going to help these people out with seed and live stock, I think we ought to make this $2,000,000.

The CHAIRMAN. We appropriated a considerable sum of money some years ago for a similar purpose and my recollection is that they only used $200,000. One million dollars will go quite a long ways where they limit it to just one cow for each farmer. They are not going into it very extensively.

The bill should be amended by inserting the words "authorized to be" before the word "appropriated" in line 13, on page 2. Without objection that amendment will be made.

(The motion of Mr. Purnell having been duly seconded, prevailed, and the committee thereupon proceeded to the consideration of other business.)

(Congressman Denison presented the following letter to the committee, which is typical of many others received and which indicate the condition in Union County, Ill., which is similar to other counties in this area:)

UNION COUNTY FARM BUREAU,
Anna, Ill., April 28, 1922.

Hon. E. E. DENISON, M. C.,
Washington, D. C.

DEAR SIR: Referring to your wire of the 26th, in which you state that the $1,000,000 appropriation was simply to rebuild levees along the Mississippi and not to aid individuals, would say that I think this will certainly not meet the situation. Additional funds or else a part of this million-dollar appropriation should be made available at once for help in such very important matters as supplying seed corn, soy beans, and other seed, including seed wheat for this fall as well as actual help in individual cases.

The amount of seed corn that will be needed in Union and Alexander Counties for instance will run from 2,500 to 3,000 bushels in these two counties alone. This seed corn must be of a fairly early variety such as Improved Reid's Yellow Dent, Silver King, or Western Plowman.

I presume, of course, you are keeping in touch with this situation and doing all you can to help the flooded counties in this district, and I would appreciate definite and full information as soon as possible as to what may be done.

Yours very truly,

J. J. DOERSCHUK, *Farm Adviser.*

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BEE IMPORTATION

HEARINGS

BEFORE THE

COMMITTEE ON AGRICULTURE

HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS

SECOND SESSION

MAY 4, 1922

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BEE IMPORTATION.

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Thursday, May 4, 1922.

The committee met at 10 o'clock a. m., Hon. Gilbert N. Haugen presiding.

Present: Representatives Haugen (chairman), McLaughlin of Michigan, Purnell, Voigt, McLaughlin of Nebraska, Riddick, Tincher, Sinclair, Thompson, Clague, Clarke, Jacoway, Rainey, Kincheloe, and Jones.

The committee, after the hearing of witnesses upon another bill, at 12 o'clock m. proceeded to the consideration of H. R. 11396, which is here printed in full, as follows:

[H. R. 11396, Sixty-seventh Congress, second session.]

A BILL To regulate foreign commerce in the importation into the United States of the adult honeybee (Apis mellifica).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in order to prevent the introduction and spread of diseases dangerous to the adult honeybee, the importation into the United States of the honeybee (Apis mellifica) in its adult stage is hereby prohibited, and all adult honeybees offered for import into the United States shall be destroyed if not immediately exported: *Provided*, That such adult honeybees may be imported into the United States for experimental or scientific purposes by the United States Department of Agriculture: *And provided further*, That such adult honeybees may be imported into the United States from countries where no diseases dangerous to adult honeybees exist, under rules and regulations prescribed by the Secretary of the Treasury and the Secretary of Agriculture.

SEC. 2. That any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both such fine and imprisonment, in the discretion of the court.

STATEMENT OF PROF. E. N. COREY, STATE ENTOMOLOGIST OF MARYLAND, COLLEGE PARK, MD.; ALSO REPRESENTING AMERICAN ASSOCIATION OF ECONOMIC ENTOMOLOGISTS.

Mr. COREY. Mr. Chairman and gentlemen, I want to speak to you briefly about this House Resolution 11396, which is a bill to regulate foreign commerce in the importation into the United States of the adult honeybee, Apis mellifica. I am not going into the technical aspects of this matter. I merely want to say that at the Atlanta meeting of the American Association for the Advancement of Science the entomologists were a unit in indorsing a bill having the sense that is before you in this resolution.

We feel that the beekeeping industry should be protected. We feel that in the introduction of bees from foreign countries there is the chance that we may wipe out, through the introduction of disease, the beekeeping industry of the United States. This bill has the backing of the Department of Agriculture, and it has the backing of beekeepers generally throughout the country.

Mr. TINCHER. What will it cost to administer it? Will it place any additional burden on the Government to administer the act?

Mr. COREY. No, sir; not as far as I can see.

Mr. TINCHER. Your idea is to keep out the diseased bees?

Mr. COREY. To keep out the diseased bees, and the only way to do that is to keep out all bees.

Mr. SINCLAIR. You prevent all importations of honeybees?

Mr. COREY. Yes, sir; except under the proviso here that the Secretary of Agriculture may import them.

In regard to the technical details of this bill I wish you gentlemen would hear Dr. E. F. Phillips, of the Department of Agriculture, who will give you their attitude on the bill.

The CHAIRMAN. Kindly tell us something about the damage done.

Mr. COREY. He can give you that information, Mr. Chairman, better than I can.

STATEMENT OF DR. E. F. PHILLIPS, OF BUREAU OF ENTOMOLOGY, DEPARTMENT OF AGRICULTURE.

Mr. PHILLIPS. Mr. Chairman, for the last 18 years there has been a disease of bees in Great Britain which has caused excessive losses, leading to the wiping out of entire apiaries throughout large sections of that country.

In December, 1920, it was announced that this disease, which is known as Isle of Wight disease, from the town of its origin, was caused by a parasitic mite which gets into the respiratory tract of the adult bee. The publication in which this discovery was announced reached us in April, 1921, and we immediately began a survey of the United States to determine whether the mite was here present. That survey last year failed to show the presence of the mite, and furthermore we have never had in this country any disease which compares in seriousness with what has been reported from Great Britain. We feel therefore that we have been fortunate in not having this disease introduced here.

Since the discovery of the cause of the disease in December, 1920, the mite causing this disease has been found in the French Alps and through Switzerland. We do not know the exact distribution of the disease, because of the newness of the discovery, but it seems quite evident that if this mite were introduced into the United States we would suffer very severely in the beekeeping interests of the country.

As Mr. Corey has already said, the entomologists in convention at Atlanta decided it was time to prevent the introduction of this disease by limiting the importation of bees. At that time a committee was appointed, consisting of two entomologists from the United States and the man in charge of beekeeping investigations for the Dominion of Canada, so that the action might be uniform in the two countries.

I should like to say here that within the last week the minister of agriculture of Canada has passed an order prohibiting the importation of bees from European countries, under the authority of an already existing act.

There is no legislation in the United States at present which would cover this case, and therefore this bill has been introduced giving authority for this restriction of importation.

Mr. JACOWAY. Have we any quarantine law which would take care of this situation?

Mr. PHILLIPS. There is no quarantine law which would cover the honeybee.

Mr. THOMPSON. Is there a very large importation of these foreign bees from Great Britain and other countries?

Mr. PHILLIPS. I might say, in the first place, that all of the honeybees in the United States or in North America have been introduced from other countries, since the honeybee was not native to this country. Of course, during the period of the war importation was impossible, but every year under normal circumstances a considerable number of queen bees are introduced from various European countries, especially Italy.

Mr. KINCHELOE. Is there any way to tell by examination whether they are diseased or not?

Mr. PHILLIPS. There is, by examining the respiratory tract of each individual bee that comes, which would necessitate the killing of that individual.

Mr. KINCHELOE. And one queen means a large number of bees, does it not.

Mr. PHILLIPS. Yes.

Mr. JONES. You plan to issue this quarantine order whenever you discover that there is a particular locality in some foreign country where the bees are affected generally with this trouble?

Mr. PHILLIPS. Under the provisions of the bill as drafted all importations are prohibited.

Mr. JONES. No; there is a proviso here.

Mr. PHILLIPS. Under the second proviso the Secretary of Agriculture and the Secretary of the Treasury may, by rules and regulations, permit the importation of queen bees from any country in which there is no serious disease of adult bees. Consequently it would be expected that immediately, in view of the fact that the disease is not known in Canada, and in view of the further fact that Canada has already safeguarded itself by prohibiting the importation from Europe, a regulation would be issued permitting the importation of bees directly from Canada.

Mr. JACOWAY. Can you say to the committee how many pounds of honey are produced in the continental United States during a year?

Mr. PHILLIPS. Our honey crop is valued at somewhere between $75,000,000 and $100,000,000 at the present time.

Mr. JACOWAY. What would that be in pounds?

Mr. PHILLIPS. I suppose four hundred or five hundred million pounds.

Mr. JACOWAY. Can you state to the committee how the production of honey in this country would be affected, covering a period of five years, say, if these diseased bees should be imported into the United States and should get a hold in this country?

Mr. PHILLIPS. If we may judge at all by what has happened in Great Britain, it would practically annihilate the beekeeping industry. It would make beekeeping unprofitable.

Mr. KINCHELOE. Would those mites propagate in this country?

Mr. PHILLIPS. So far as we know, they would. Last year when we were making a study in the Bureau of Entomology to determine whether this mite was present, through the kindness of a man engaged in beekeeping investigations in Scotland we received two shipments of adult bees which were supposedly infected with these mites. One of these shipments came through with all the bees alive, and there were living mites in these bees. Of course we immediately took precautions to see that they did not do any damage, but it showed conclusively that in the mailing of queen bees from various other countries there is a very easy means of introducing this parasitic mite.

Mr. JACOWAY. Could they be killed before shipping the bees?

Mr. PHILLIPS. Not without killing the bees. The mite is so small as to be microscopic, and consequently it would require a scientific investigation of each individual bee to determine whether the mite was present in that bee.

Mr. JONES. There is no disposition on the part of any beekeeping industry or anything like that to limit the shipment of bees into this country?

Mr. PHILLIPS. No; it is simply a matter of precaution.

Mr. JONES. There is no organized effort to limit the number of bees here?

Mr. PHILLIPS. Oh, no.

Mr. KINCHELOE. Do you term the adult honeybees the "queens"?

Mr. PHILLIPS. The queens are adult honeybees, yes; but we also have adult workers and adult drones. Of course, the queen bee is an adult bee.

Mr. KINCHELOE. But all adult bees are not queens?

Mr. PHILLIPS. No.

Mr. KINCHELOE. I understood you to say a while ago that this proviso simply gave the Secretary of Agriculture authority, in his discretion, to import queens.

Mr. PHILLIPS. That is because there would be no purpose whatever in introducing adult bees of any other kind.

The CHAIRMAN. The Post Office Department has the power to regulate, but there are importations made outside of the Post Office Department over which it has no jurisdiction.

Mr. PHILLIPS. Yes. At the suggestion of the Secretary of Agriculture, about a month ago the Post Office Department passed a postal regulation prohibiting the importation of queen bees through the mails, so that that avenue is already adequately cared for. But there has been, and probably will continue to be, a considerable importation of queen bees, with accompanying adult workers, without passing through the mails. This leaves an avenue open for anyone who cares to do so to bring in adult bees.

The CHAIRMAN. And no one has power to stop it?

Mr. PHILLIPS. No one has any power whatever to stop it.

Mr. MCLAUGHLIN of Michigan. And your intention now is to give the Secretary authority to put on an embargo?

Mr. PHILLIPS. The bill does in itself. The bill prohibits the importation, but the Secretary of Agriculture or the Secretary of the Treasury may remove that restriction wherever they find it necessary and safe.

Mr. MCLAUGHLIN of Michigan. I do not know about that second proviso. It reads: "That such adult honeybees may be imported into the United States from countries where no diseases dangerous to adult honeybees exist, under rules and regulations prescribed by the Secretary of the Treasury and the Secretary of Agriculture."

That does not authorize them to shut them out altogether. They must permit them to come in, under such rules and regulations as they may prescribe.

Mr. JONES. The first section prohibits it.

Mr. MCLAUGHLIN of Michigan. I know, but that proviso qualifies it in such a way as practically to take away from the Secretary of Agriculture the right to forbid the importation. They must be permitted to come in, under rules and regulations provided by him. The disease may exist in some countries and not be known to the Secretary of Agriculture, or representations made to him may indicate that there are no diseases in those countries. In the interest of safety he should be permitted to say they should all be shut out. I doubt if he could do it, under that second proviso.

Mr. JONES. Change the last line on the first page to read, "may in the discretion of the Secretary of Agriculture and the Secretary of the Treasury be imported into the United States."

Mr. McLAUGHLIN of Michigan. The first proviso is intended to permit the importation of diseased bees from countries where the disease exists, for experimental and scientific purposes by the Department of Agriculture. Is it intended to bring the diseased bees in?

Mr. PHILLIPS. Oh, no, not at all.

Mr. McLAUGHLIN of Michigan. It says that such adult bees may be imported.

Mr. PHILLIPS. The prohibition on line 6 is that adult bees are prohibited from importation; that is, all adult bees.

Mr. McLAUGHLIN of Michigan. But you say "such adult bees."

Mr. KINCHELOE. It does not say "diseased" or "not diseased."

Mr. PHILLIPS. On lines 4, 5, and 6 it says:

"The importation into the United States of the honeybee (Apis mellifica) in its adult stage is hereby prohibited, and all adult honeybees offered for import into the United States shall be destroyed if not immediately exported."

Mr. McLAUGHLIN of Michigan (reading). "*Provided*, that such adult bees"—that is, diseased or not diseased—"may be imported by the Department of Agriculture." Is that right?

Mr. PHILLIPS. I would interpret that to apply to all adult bees, but not being an attorney——

Mr. KINCHELOE. I think the proviso would permit the Secretary of Agriculture to import for scientific purposes——

Mr. McLAUGHLIN of Michigan. Diseased or not diseased.

Mr. KINCHELOE. Yes.

Mr. JACOWAY. Is there any other kind of bee except that named here—*Apis mellifica?*

Mr. PHILLIPS. No; that is the only kind of bee that is used in the production of honey.

Mr. JACOWAY. Why could you not leave that designation out and strenthen the bill, instead of confining it strictly to this *Apis mellifica?*

Mr. PHILLIPS. I have no objection whatever to the omission of those words. They look scientific, that is all.

Mr. McLAUGHLIN of Michigan. I approve of the purpose of this, but I was wondering whether this bill would carry it out. I think that first proviso would permit the Secretary of Agriculture to bring in the bees for scientific purposes, diseased bees or not diseased.

Mr. PHILLIPS. I do not think the Secretary would ever want to bring in any diseased bees.

Mr. McLAUGHLIN of Michigan. For study?

Mr. PHILLIPS. Well, he might do that.

Mr. McLAUGHLIN of Michigan. And then, except to bring them in for scientific purposes, they have authority only to make rules and regulations; they have no authority to forbid them altogether.

Mr. TINCHER. I think that adding the words "in their discretion" would cure that.

Mr. KINCHELOE (reading). "Under rules and regulations prescribed by the Secretary of Agriculture and the Secretary of the Treasury in their discretion." I think your point is well taken there.

Mr. PHILLIPS. All that I know about the legal aspects of this bill is that it was examined and passed on by the solicitor of the department, who seemed to feel that it properly safeguarded the beekeeping interests. If that is not the case there will be no objection, I am sure, to such modification as will strengthen the bill.

Mr. CLARKE. I think that is open to your construction, Mr. McLaughlin.

Mr. McLAUGHLIN of Michigan. As soon as that is corrected I would like to report the bill, but I am not sure just what the amendment should be.

Mr. PHILLIPS. Regarding the desirability of this bill, I should like to have you hear for just a moment Mr. George F. Demuth, editor of Gleanings in Bee Culture, one of the journals published in this country, who has had considerable communication with the beekeepers of this country.

STATEMENT OF MR. GEORGE S. DEMUTH, EDITOR, GLEANINGS IN BEE CULTURE, MEDINA, OHIO.

Mr. DEMUTH. Mr. Chairman, I am one of the editors of Gleanings in Bee Culture, a beekeepers' magazine published at Medina, Ohio. Some time ago we sent out to all the queen breeders in the United States, breeders of queen bees, a circular letter telling them about the action taken at Atlanta by the committee appointed by the economic entomologists. In response to that there have been received no letters adverse to the passage of any rule or regulation that can be had to shut out bees from foreign countries.

We have been importing queen bees into the United States from foreign countries for 50 years. There is now no need for further importation. We have paid more attention to the breeding of queens in this country than in any other country in the world, and at the present time we no doubt have better bees than can be had from any country in Europe. So far as we know the beekeepers of the country are in favor of absolute exclusion of bees from all foreign countries, with a provision for an exception where it may be advisable to bring in some new race or something of that kind.

Mr. JACOWAY. Have you any information as to how much money is invested in bees in the United States?

Mr. DEMUTH. No one knows how much is invested in bees in the United States. The census figures are not adequate to cover it.

Mr. JACOWAY. Can you approximate it?

Mr. DEMUTH. I could not. The annual income is somewhere between $75,000,000 and $100,000,000.

Mr. JACOWAY. It is a great industry.

Mr. DEMUTH. It is an industry that ranks, I believe, next above the rice industry. It is quite a large industry in certain parts of the country.

Mr. JACOWAY. Do you think the passage of this bill would preserve that industry?

Mr. DEMUTH. I do.

Mr. MCLAUGHLIN of Michigan. Is there any opposition to this bill?

Mr. DEMUTH. I understand there is some opposition.

Mr. MCLAUGHLIN of Michigan. From whom?

The CHAIRMAN. There has been some question as to the quarantine.

Mr. DEMUTH. There is a misunderstanding, I think. Several persons have written in letters objecting to this, because they seem to think it would be impossible to import queen bees at any time if this bill were to pass.

Mr. MCLAUGHLIN of Michigan. Who are they? Not individually, but what is their business and how are they connected with the industry?

Mr. DEMUTH. Persons who desire to bring in queens from foreign countries and breed queens for sale.

Mr. MCLAUGHLIN of Michigan. Could they not breed them with the queens already in here?

Mr. DEMUTH. Yes; they could, but if they could bring in some from foreign countries and advertise that they had a special strain or a special race they could probably sell them better.

Mr. MCLAUGHLIN of Michigan. Do they object to any restriction whatever? Do they ask to be permitted to do just as they please?

Mr. DEMUTH. I think not. I think they ask that a provision be made whereby they may import queen bees from foreign countries, and that is already covered in the bill.

Mr. KINCHELOE. It does not give them the right to do it. It gives the Secretary of Agriculture the right to bring them in for experimental purposes only.

Mr. JONES. There are men in this country who make a business of breeding bees?

Mr. DEMUTH. Oh, hundreds of them. We sent out that circular letter to everyone known to Gleanings in Bee Culture.

Mr. KINCHELOE. If you cut off all importation of bees it would be quite a blow to their business, would it not?

Mr. DEMUTH. Only a few queens are imported. They use them for breeders, and they sell the daughters of these queens that they import, or usually two or three generations removed from the original queen that was brought here from the foreign country. As I said a while ago, we have better bees in this country now than they have in any European country.

Mr. KINCHELOE. Why should they want to import them if that is true?

Mr. DEMUTH. Certain persons would like to import queens from abroad, because if they could do that they could make a point of advertising queens of that race instead of the Italian queens which are recognized in this country as the general-purpose honeybee.

Mr. KINCHELOE. Has the disease been recognized and found to exist only in those that are imported from foreign countries, or has it developed in this country?

Mr. DEMUTH. There has been no case found in this country.

Mr. KINCHELOE. But it has been found in this country, brought in from foreign countries?

Mr. DEMUTH. Only in the sample sent to the Bureau of Entomology last fall, as I understand it.

Mr. KINCHELOE. From where?

Mr. DEMUTH. From England.

Mr. JONES. Does your magazine circulate mostly among people who are engaged in the keeping and breeding of bees?

Mr. DEMUTH. Yes, sir.

Mr. JONES. And your paper, in your opinion, largely reflects the opinion and wishes of the people whose business it is to breed these bees?

Mr. DEMUTH. Not only the breeders of queen bees but the honey producers. They are the ones who are most interested.

Mr. JONES. The reason I asked that question is this: I saw a man here yesterday who said that he kept a lot of bees for the purpose of producing honey and that he did not think this bill ought to pass. He did not give me any particular reason, except that he would like to have the privilege of importing queen bees from foreign countries. He said that he sometimes paid as high as $25 or $50 for a queen imported from some other country.

Mr. TINCHER. I think Mr. Phillips deserves commendation for bringing this bill here. This is the first time in my experience that a scientific department of the Government has advocated the stopping and stamping out of disease before we had to spend a lot of money in hunting it up in this country.

I move that the bill be reported out, with the insertion of the words "in their discretion," and that the chairman be instructed to have it placed on the Unanimous-Consent Calendar.

(The motion was duly seconded and carried.)

(Thereupon, at 12.35 o'clock p. m., the committee adjourned to meet at 10 o'clock a. m. Saturday, May 6, 1922.)

GRAIN FUTURES ACT

HEARINGS

BEFORE THE

COMMITTEE ON AGRICULTURE

HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS

SECOND SESSION

JUNE 7, 8, 9, AND 12, 1922

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COMMITTEE ON AGRICULTURE.

HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS, SECOND SESSION.

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GRAIN FUTURES ACT.

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Wednesday, June 7, 1922.

The committee met at 10 o'clock a. m., Hon. Gilbert N. Haugen (chairman) presiding.

There were present: Mr. Haugen, Mr. McLaughlin of Michigan, Mr. Purnell, Mr. Voigt, Mr. McLaughlin of Nebraska, Mr. Riddick, Mr. Tincher, Mr. Williams, Mr. Hays, Mr. Thompson, Mr. Gernerd, Mr. Clague, Mr. Clarke, Mr. Rainey, Mr. Aswell, Mr. Kincheloe, Mr. Jones, and Mr. Ten Eyck.

The CHAIRMAN. The committee has met this morning to give consideration to the subject of future trading. The Chair lays before the committee H. R. 11843. We will first hear from representatives of the department.

Mr. TINCHER. Yes; that is my understanding.

The CHAIRMAN. Mr. Morrill, we will be pleased to hear you now.

STATEMENT OF MR. CHESTER MORRILL, ASSISTANT TO THE SECRETARY OF AGRICULTURE, IN CHARGE OF ADMINISTRATION OF GRAIN FUTURES TRADING ACT.

Mr. MORRILL. Mr. Chairman, I do not know how far you wish me to go into the subject of the pending bill or just how much you wish in the way of information from me. If you would indicate the line you want me to follow I will try to do that.

Mr. TINCHER. Mr. Chairman, may I suggest that when we agreed the other day to call Mr. Morrill, it was my understanding that what we wanted to do was to go into the question of the legality of the bill and have him explain any changes between this bill and the former legislation. I think the committee understands the legislative status of this matter.

Mr. CLARKE. I would like him to go quite a little ways further than that. I would like to know just exactly what your interpretation is of the Supreme Court decision, from your viewpoint, and have you indicate just what was eliminated from the old bill.

Mr. TINCHER. I supposed that would be covered in a discussion of the legality of the proposed bill.

Mr. ASWELL. What is the new part of the bill?

Mr. MORRILL. I can indicate that as I go along.

Mr. ASWELL. Are you going clear through the bill again?

Mr. CLARKE. What I read into the decision and what somebody else may read into it may be materially different.

Mr. JONES. I suppose you have framed in your own mind your method of treating this subject, have you not?

Mr. MORRILL. Yes.

The CHAIRMAN. Have you in mind to take the bill up section by section and point out the changes and discuss the question of its legality?

Mr. MORRILL. I can answer the question as to the decision of the Supreme Court first, if you wish, and then take up the differences between the Capper-Tincher bill and the new Capper-Tincher bill.

The CHAIRMAN. Would you prefer to make your statement without being interrupted?

Mr. MORRILL. I think I can go right along but, of course, I am perfectly willing to answer any questions you may desire to ask.

The CHAIRMAN. I think the committee would leave it to you to decide whatever you desire to do in the matter.

Mr. MORRILL. The law which was before the Supreme Court was based upon the taxing power of Congress and provided for two separate taxes, one covered by section 3 on puts and calls and other similar transactions, and the other tax provided by section 4 on the general class of future trading that we know as futures.

The question directly before the Supreme Court was in regard to the constitutionality of section 4 and the interrelated provisions of the books which were placed there for the purpose of carrying out the general idea behind section 4. The Supreme Court held that section 4 and all the related provisions of a regulatory character are unconstitutional. It, however, did not hold section 3 to be unconstitutional because section 3 was confined to a tax and had no regulatory provisions except in so far as it might be necessary for the Treasury Department to take action to carry out the taxing provisions.

Mr. CLARKE. May I interrupt you just there? One of the great objects, as I understood it, presented here at the time and one of the reasons for this bill was that when the Government had undertaken to run down corners in wheat and grain and other things heretofore, they never had been able to obtain the information because a great many of the transactions were verbal or the records were destroyed. Now, under the decision of the Supreme Court, that part of the law still stands, does it not?

Mr. MORRILL. The decision of the Supreme Court takes away from the Secretary of Agriculture the power to compel an exchange or its members to make any report or to open up its records because those provisions were for the purpose of carrying out section 4 and were regulatory in character, in the opinion of the Supreme Court.

Mr. GERNERD. Just why did the Supreme Court say that the Department of Agriculture could not carry out the purpose of section 4? I have the opinion before me, but I want your viewpoint.

Mr. MORRILL. Speaking with reference to the bill which was before the court, they held that it was manifestly passed in the belief by Congress that it could be carried out under the taxing power and there was no evidence in the bill of an intention to exercise any other power, such as the interstate commerce power, and in the absence of a declared intention in the bill or any language showing the intention to exercise some other power, the Supreme Court would not write that into the bill.

Mr. GERNERD. Therefore it declared this section unlawful just because of the taxing feature.

Mr. MORRILL. Just because it was under the taxing power.

Mr. GERNERD. Now, if we were to substitute for that the same provisions that are given to the interstate commerce work, it would declare the same to be constitutional; in other words, that is the inference to be drawn.

Mr. MORRILL. There are certain inferences in the opinion to which I will later refer.

Mr. KINCHELOE. Right there, let me get this question clear in my own mind. Of course, the Supreme Court decides this act unconstitutional because of the taxing power, and the present bill, as drawn here, undertakes to get around that and you have undertaken to draw a bill that will be constitutional by regulating interstate commerce.

Mr. MORRILL. Yes, sir.

Mr. KINCHELOE. Now, subsection a of section 2 of this bill undertakes to define interstate commerce. Is that the same provision, in substance, as was used to define interstate commerce in the packers' bill?

Mr. MORRILL. Yes, sir.

Mr. KINCHELOE. That is what I thought, and that is the reason I asked the question.

Mr. JONES. Let me ask you a question right there, while you are on that subject. Is it your opinion that Congress by virtue of the power that is granted to it to regulate interstate commerce has the power to prohibit interstate commerce?

Mr. MORRILL. No, sir; I am not taking that position, and this bill is not a prohibitory bill.

Mr. JONES. I am asking this question for information: I understand here that section 4 starts off with an absolute prohibition except and unless they will comply with certain things and conditions. Now, is not that an effort to prohibit interstate commerce entirely?

Mr. MORRILL. No; it is merely expressed by way of prohibition in order to secure regulation. A great many laws passed under the interstate commerce power declare certain things unlawful, which amount to a prohibition, but it is solely for the purpose of regulating interstate commerce, after all.

Mr. JONES. Of course, if the court, in construing this, pursued the same line of reasoning they did in the case here. they would hold that.

Mr. MORRILL. If I may, I would like to go on and point out certain things in the decision of the Supreme Court which throw light on this matter of the use of the commerce power, and it must be borne in mind that when I answered the question about the definition of interstate commerce, I am not taking the position that these transactions on the board of trade are in themselves interstate commerce. I will explain that remark more fully.

Mr. JONES. How are you going to connect them up?

Mr. MORRILL. In the decision of the Supreme Court, it called attention to certain language in the caption of the bill which was declared unconstitutional where they used the words, providing for the regulation of boards of trade, and called attention to the fact that the other provisions incidental to section 4 seemed to be wholly for the purpose of regulation, and in the opinion of the Supreme Court the bill showed on its face that the use of the taxing power was an incident instead of the main purpose of the bill.

In discussing the subject, I am going to merely quote certain sentences in the opinion. Of course, the whole opinion is available.

The Supreme Court said:

"It is impossible to escape the conviction"——

The CHAIRMAN (interposing). What are you reading from?

Mr. MORRILL. I am reading from the decision of the Supreme Court on page 8 of the pamphlet.

Mr. JONES. The last paragraph on page 8.

Mr. MORRILL (reading):

"It is impossible to escape the conviction, from a full reading of this law, that it was enacted for the purpose of regulating the conduct of business of boards of trade"—

Then I will skip a little bit—

"Indeed, the title of the act recites that one of its purposes is the regulation of boards of trade."

Then dropping down a little bit further:

"The manifest purpose of the tax is to compel boards of trade to comply with regulations, many of which can have no relevancy to the collection of the tax at all."

Then the Supreme Court goes on——

Mr. JONES. Just in that connection, does this present bill undertake to require any conditions that have no relevancy to interstate commerce?

Mr. MORRILL. We think not, but that is a matter that can be considered, and there is one that I will mention when I come to analyze the bill.

Going on, the Supreme Court referred to the child-labor case and to other cases involving the taxing power, including the Veazie Bank case, involving State-bank notes, and the Oleomargarine case, and said:

"It was pointed out that in none of those cases did the law objected to show on its face, as did the child-labor tax law, detailed regulation of a concern or business wholly within the police power of the State."

Then the Supreme Court says:

"We come to the question, then, Can these regulations of boards of trade by Congress be sustained under the commerce clause of the Constitution? Such regulations are held to be within the police powers of the State. * * * There is not a word in the act from which it can be gathered that it is confined in its operation to interstate commerce. * * * Looked at in this aspect and without any limitation of the application of the tax to interstate commerce or to that which the Congress may deem from evidence before it to be an obstruction to interstate commerce, we do not find it possible to sustain the validity of the regulations as they are set forth in this act."

So you will see that the Supreme Court was plainly indicating that there was a field for consideration that had not been covered by the bill that was declared unconstitutional.

Now, the Supreme Court refers to the case of Ware & Leland *v.* Mobile County (209 U. S. 405), which involved a State tax upon transactions, and the State tax was upheld because the transactions themselves were not interstate commerce and because there was involved the question of a State tax.

Now, the Supreme Court expressly says:

"It follows that sales for future delivery on the board of trade are not in and of themselves interstate commerce. They can not come within the regulatory power of Congress as such, unless they are regarded by Congress, from the evidence before it, as directly interfering with interstate commerce so as to be an obstruction or a burden thereon." Referring to the case of United States *v.* Ferger (250 U. S. 199).

Later, the court goes on to say, referring to the Patten case (226 U. S. 525), involving cotton transactions on the New York Cotton Exchange, that "mere contracts for sales of cotton for future delivery which did not oblige interstate shipments were not interstate commerce, an indictment charging the defendants with having cornered the whole cotton market of the United States by excessive purchases of cotton for future delivery and thus conspired to restrain, obstruct, and monopolize interstate commerce in cotton, was sustained under the first and second sections of the Sherman antitrust law. This case like Stafford *v.* Wallace—which is the Packers and Stockyards case—followed the principles of Swift & Company *v.* United States (196 U. S. 375). In that case is found the origin of the definition of commerce contained in the packers and stockyards act.

Speaking directly with reference to what was held to be constitutional and unconstitutional in this bill, the Supreme Court said, on page 13:

"There are sections of the act to which under section 11 the reasons for our conclusion as to section 4 and the interwoven regulations do not apply. Such is section 9 authorizing investigations by the Secretary of Agriculture and his publication of results. Section 3, too, would not seem to be affected by our conclusion."

Mr. KINCHELOE. On those points you have put the same sections in this bill that were in the other bill?

Mr. MORRILL. Yes; as nearly as possible.

Then you will notice the court goes on and makes another statement referring to section 3:

"This is the imposition of an excise tax upon certain transactions of a unilateral character in grain markets which approximate gambling or offer full opportunity for it and does not seem to be associated with section 4. Such a tax without more would seem to be within the congressional power."

I think that gives the pertinent pints in the decision of the Supreme Court on the future trading act.

In the packers and stockyards decision—and in referring to the packers and stockyards decision I do not mean to imply that the proposed regulation of the future exchanges is strictly comparable with the packers and stockyards case, because there is quite a fundamental and essential difference between the two, still there are certain statements made in the packers and stockyards decision that have a bearing upon the matter before you.

The court says, on page 8, the first full paragraph:

"The object to be secured by the act is the free and unburdened flow of livestock from the ranges and farms from the West and the Southwest through the great stockyards and slaughtering centers on the borders of that region and thence in the form of meat products to the consuming cities of the country in the Middle West and East, or, still as live stock, to the feeding places and fattening farms in the Middle West or East for further preparation for the market."

Now, the court goes on and refers to the things that were in the minds of Congress about the regulation under the packers and stockyards' act and said:

"The chief evil is the monopoly of the packers enabling them unduly and arbitrarily to lower prices to the shipper who sells and unduly and arbitrarily to increase the price to the consumer who buys. Congress thought that the power to maintain this monopoly was aided by control of the stockyards. Another evil which it sought to provide against by the act, was exorbitant charges, duplications of commissions, deceptive practices in respect of prices, in the passage of the live stock through the stockyards, all made possibly by collusion between the stockyards management and the commission men on the one hand, and the packers and dealers on the other. Expenses incurred in the passage through the stockyards necessarily reduce the price received by the shipper and increase the price to be paid by the consumer. If they be exorbitant or unreasonable they are an undue burden on the commerce which the stockyards are intended to facilitate. Any unjust or deceptive practice or combination

that unduly and directly enhances them is an unjust obstruction to that commerce."

Mr. KINCHELOE. Of course, Mr. Morrill, you have in mind in reading this, its relativity to the interstate commerce provision of your new bill.

Mr. MORRILL. Yes, sir. The Supreme Court, you will notice in the packers and stockyards' case, did not necessarily hold that the transactions of commission men in the stockyards were in themselves interstate commerce, but it bases its reasoning upon the relationship of those transactions to interstate commerce; and the court goes on to say—and this is pertinent right here—referring to the antitrust laws and particularly to the Swift case, which was decided under the antitrust laws, reading from page 12:

"The language of the law shows that what Congress had in mind primarily was to prevent such conspiracies by supervision of the agencies which would be likely to be employed in it. If Congress could provide for punishment or restraint of such conspiracies after their formation through the antitrust law as in the Swift case, certainly it may provide regulations to prevent their formation."

Then on page 13:

"Whatever amounts to more or less constant practice and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause."

Mr. KINCHELOE. Your idea is that inasmuch as they hold in the Packers and Stockyards' case that all the transactions in the stockyards are not interstate commerce, by the same analogy or reasoning, the provisions of the present bill would not be vitiated by the Supreme Court because of the fact that some of the transactions on the grain exchange are not necessarily interstate commerce.

Mr. MORRILL. Yes. The Supreme Court has expressly held that transactions on the cotton exchanges are not interstate commerce, but it upheld the indictment in the Patten case on the ground that there was an obstruction to interstate commerce through the operations of Patten and others on the future exchanges, and at the end of the decision in the Packers and Stockyards' case, the court said, speaking about the act:

"Its provisions are carefully drawn to apply only to those practices and obstructions which in the judgment of Congress are likely to affect interstate commerce prejudicially. Thus construed and applied, we think the act clearly within the congressional power and valid."

Mr. CLARKE. How are you going to differentiate between the practices that are and the practices that are not within the purview of the law?

Mr. MORRILL. That will depend upon the opinion of Congress as to what things in the past have been conducive to disadvantage to interstate commerce in grain.

Mr. CLARKE. You will surely have to go further than the mere opinion of Congress on the matter.

Mr. MORRILL. Of course, the opinion of Congress must be based upon——

Mr. CLARKE. The opinion of Congress was expressed in the other law, and we all made ourselves foolish on that.

Mr. MORRILL. The opinion of Congress must be based upon facts, and your committee has held hearing after hearing. You have 1,000 pages of record on the subject.

Mr. CLARKE. More than that.

Mr. MORRILL. Now, I have read certain extracts from the decision in the future trading case and the Packers and Stockyards case. There are certain cases mentioned in those decisions and also some not mentioned in those decisions which I think should be directed to your attention.

Mr. KINCHELOE. Your idea is that if the provisions of the packers' act are drawn to apply only to those practices and obstructions which, in the judgment of Congress, are likely to affect interstate commerce, that provisions relative to grain can be drawn in the same way.

Mr. MORRILL. Well, not in the same way, but on the same general plan.

Mr. KINCHELOE. Yes; I did not mean in exactly the same way, but on the same basis.

Mr. MORRILL. Yes; and I am making the point that if the Supreme Court could indict Patten and others for cornering the market on the New York Cotton Exchange by using transactions which admittedly are not in themselves interstate commerce, it can provide for the regulation of those transactions in advance so that an indictment will not become necessary.

Mr. CLARKE. What is the citation to the Patten case?

Mr. MORRILL. Two hundred and twenty-sixth United States, 525.

In the Minnesota Rate cases (230 U. S. 352), at page 399, the court said:

"The authority of Congress extends to every part of interstate commerce and to every instrumentality and agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere."

Then in the case of United States *v.* Ferger (250 U. S. 199), in speaking about a fraudulent and fictitious bill of lading, the court said:

"But this mistakenly assumes that the power of Congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt with, instead of by relation of that subject to commerce and its effect upon it. We say mistakenly assumes because we think it clear that if the proposition were sustained it would destroy the power of Congress to regulate, as obviously that power, if it is to exist, must include the authority to deal with obstructions to interstate commerce (In re Debs, 158 U. S. 564) and with a host of other acts which, because of their relation to and influence upon interstate commerce, come within the power of Congress to regulate, although they are not interstate commerce in and of themselves."

The case I was going to read from next was a case in a lower Federal court, but it is along the same general line of the Supreme Court decision which I have read.

Mr. CLARKE. Just put in the citation.

Mr. MORRILL. Knauer *v.* United States (237 Fed. 8, 12). I can read the citation because it is brief.

"The act in question does not require that the defendants shall have been engaged in interstate commerce. If they were all engaged exclusively in intrastate commerce, and they formed a conspiracy to restrain the trade of the manufacturers and wholesalers who were engaged in interstate commerce, that would make them guilty."

Mr. MCLAUGHLIN of Michigan. What court was that?

Mr. MORRILL. I do not have a reference to the particular court, but it was a lower Federal court.

Mr. MCLAUGHLIN of Michigan. And the decision was not appealed from?

Mr. MORRILL. No.

Mr. MCLAUGHLIN of Michigan. So the case never reached the Supreme Court?

Mr. MORRILL. No; that is the reason I simply referred to it and do not attach any importance to it.

Now, I might mention the Clayton Act. Section 3 of the Clayton Act, among other things, makes it unlawful for persons engaged in interstate commerce, in the course of such commerce, to lease, sell, or contract for the sale of machinery, goods, wares, etc., for use in the United States, or to fix or discount the price upon condition that the lessee or purchaser shall not use machinery or supplies of a competitor where the effect of such lease, contract, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly. In the recent case of United Shoe Machinery Corporation *v.* United States (advance sheets, 42 Sup. Ct., pp. 363, 368), arising under that act, the court said:

"It is insisted that the leases in controversy were not made in the course of interstate commerce, and therefore can not be embraced within the terms of the Clayton Act. It is provided in the decree that it shall apply to all leases covering shoe machinery shipped from one State to the user or factory for use in another State in the course of or as a part of the transaction between the lessor and the lessee, resulting in the making of the lease. It is true that the mere making of the lease of the machine is not of itself interstate commerce. But where, connected with the making of such a lease, a movement of goods in interstate commerce is required, we have no doubt of the authority and purpose of Congress to control the making of such leases by the enactment of the statute before us."

Mr. KINCHELOE. That case in the lower court that you read from is rather interesting to me. Have you found, in your investigation and in running down these citations, where the Supreme Court has ever held that where two or more conspired to manipulate the market or to raise the prices to the prejudice of those who are engaged in like business in interstate commerce, that they are subject to indictment in a Federal court?

Mr. MORRILL. I can not give you the citations at the moment, because I have not had the time to run through these matters.

Mr. TINCHER. They held that straight out in the cotton exchange case.

Mr. KINCHELOE. In what case?

Mr. TINCHER. When Patten was indicted under the cotton futures act.

Mr. KINCHELOE. I have not read that case, and I did not know about it.

Mr. MORRILL. The Patten case I refer to, because it seems to me very pertinent.

Mr. JONES. In that case there was a direct purpose to interfere with interstate commerce. That is what they intended to do.

Mr. MORRILL. Probably so.

Mr. JONES. In other words, that is what the courts concluded.

Mr. MORRILL. Yes; they concluded that from the effect.

Mr. KINCHELOE. Were the facts involved in the cotton exchanges case the same as those involved in the case referred to here in the lower courts?

Mr. JONES. No; I think the one he cited goes further than the Patten case.

Mr. MORRILL. May I say that in the course of my work in the department now, I do not have as much time as I used to have to go into legal decisions. My work is largely administrative now, and Mr. Lees, of the solicitor's offices, who is assistant to the solicitor, has gotten for me a number of these citations, and, as a matter of fact, has been making a pretty thorough study of the law, with the idea that he would be able to give a rather comprehensive résumé of the legal decisions.

Mr. CLARKE. Then how do you happen to be here instead of Mr. Lees on this matter?

Mr. MORRILL. Because Mr. Lees is a member of the office of the solicitor of the department, which handles only legal matters, and I was placed in charge of the administration of the future trading act. I was formerly a member of the solicitor's office.

Mr. CLARKE. You are the one designated by the Secretary of Agriculture.

Mr. MORRILL. Yes, sir.

Mr. TINCHER. Mr. Morrill, let us have a little of the history of the preparation of this bill, just for the benefit of the committee. You have been with the Department of Agriculture how long?

Mr. MORRILL. I have been with the Department of Agriculture for seven years.

Mr. TINCHER. And up until Mr. Wallace's term, you were in what department?

Mr. MORRILL. I was first in the solicitor's office until in 1919, when I was appointed supervisor of the enforcement of the United States cotton futures act. Then I became assistant to the chief of the Bureau of Markets, and subsequently assistant chief, and at the time of the passage of the packers and stockyards act and the future trading act, the Secretary placed me in charge of the administration of those two laws.

Mr. TINCHER. In the preparation of this bill, how long a time did you take to work out this constitutional question?

Mr. MORRILL. Of course, it has been constantly before us ever since the initiation of the proceeding by Mr. Hill at Chicago to test the constitutionality of the future trading act. Naturally we saw the weakness of the bill from a legal standpoint, and we have given a good deal of attention to just how that weakness might be overcome, either in the case itself or subsequently.

Mr. TINCHER. Then after the Taft decision and after I asked your department to go to work on it, how long a time did your legal department spend in preparing this bill?

Mr. MORRILL. They have been giving pretty close attention to it and in addition we have discussed these legal questions with the legislative drafting service of the House, and they are in accord with our views on the legal phases.

Mr. TINCHER. Now, tell the committee whom you have in your legal department.

Mr. CLARKE. Is that the same legislative drafting service that prepared this other act that was declared unconstitutional?

Mr. MORRILL. Yes.

Mr. TINCHER. Oh, no; let us get the record straight on that. The legislative drafting service prepared the packer control act but they did not prepare the future trading act.

Mr. MORRILL. The future trading act was not prepared by the legislative drafting service nor by the Agricultural Department.

Mr. KINCHELOE. But the packer control act was.

Mr. MORRILL. Yes.

Mr. TINCHER. What lawyers are there in your legal department?

Mr. MORRILL. We have about 25 in Washington, have we not, Mr. Lees?

Mr. LEES. About that many.

Mr. MORRILL. And probably 15 or 20 outside.

Mr. TINCHER. Who is the solicitor for the department?

Mr. MORRILL. The solicitor is Mr. Williams.

Mr. TINCHER. Did Judge Hiner go over this bill with you?

Mr. MORRILL. Judge Hiner has nothing to do with the administration of the future trading act. He is connected with the packers and stockyards administration.

Mr. TINCHER. He had considerable to do with the trial of the case, did he not?

Mr. MORRILL. Not with the future trading case.

Mr. TINCHER. I mean with the packers and stockyards case.

Mr. MORRILL. With the packers and stockyards case, yes.

Mr. KINCHELOE. When it suits you to do so, I would like for you to take up this new bill and discuss it section by section and explain to us why it will get around this decision of the Supreme Court on the future trading act.

Mr. MORRILL. Taking the title of H. R. 11843 and comparing it with the title of the future trading act, you will find a distinct difference. The title is entirely changed. It reads: "For the prevention and removal of obstructions and burdens upon interstate commerce in grain, by regulating transactions on grain future exchanges and for other purposes."

Mr. KINCHELOE. I think you had better quote the title of the old act.

Mr. MORRILL. The title of the old act is as follows:

"An act taxing contracts for the sale of grain for future delivery and options for such contracts, and providing for the regulation of boards of trade, and for other purposes."

May I say that in going over the substitute bill, as a means of serving the committee, we adhered as closely as possible to the future trading act, with the exceptions to which I will call attention as I go along.

Mr. CLARKE. The first exception, then, is in the title; is that it?

Mr. MORRILL. Yes. In the first section, immediately following the title of the bill, you will notice that the short title is changed to "The grain futures act," instead of the "Future trading act," merely as a means of providing a distinction between the title of the bill which was declared unconstitutional and the new one.

Mr. KINCHELOE. What would be the difference between the two?

Mr. MORRILL. It is just a matter of reference.

Mr. KINCHELOE. I had the idea that you had drawn this bill with the idea of trying to get around the objections raised to the original act by the Supreme Court, and I was wondering what was the difference between the grain futures act and the future trading act.

Mr. MORRILL. It is purely a question of title. It must be borne in mind, however, that the future trading act does not make the distinction that is made in this bill. It is limited to grain futures and does not apply to cotton futures or to any futures outside of grain.

Now, in section 2a, the language is the same down to line 14 on page 2, and from thereon the material is new in the section and was not contained in the future trading act. I will read it in order to get it before you:

"The words 'interstate commerce' shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession or the District of Columbia."

Now, that is exactly the same as the definition, so far, in the packers and stockyards act, except we use the word "interstate commerce" instead of the word "commerce."

The CHAIRMAN. Mr. Morrill, did I understand you to say that the department drafted the packer bill?

Mr. MORRILL. No; the packer bill, I take it, is not the product of any one person.

The CHAIRMAN. This committee gave about 40 days' hearings to that bill. We had the legislative drafting service of the House here and we had the assistance of you and others from your department.

Mr. MORRILL. I understand that the legislative drafting service was of a great deal of assistance to your committee.

Mr. TINCHER. I understood the only reference he made to the legislative drafting service was that that service was used on the packer bill and was consulted about legal phases of the present bill.

The CHAIRMAN. The packer bill is not the product of any one man or any one drafting service, or any one department. It is the product of the whole Committee on Agriculture. The committee gave about 40 days' hearings to it. There are thousands of pages of printed hearings in reference to it. Representatives of the Department of Agriculture appeared before the committee and were of much assistance. I am perfectly willing that the department shall have its share of the credit, but I do not want the committee and the House legislative drafting service to be robbed of the credit due them.

Mr. KINCHELOE. I understood the distinction Mr. Morrill made was that the legislative drafting service did assist in the preparation of the packer bill, but did not assist in the preparation of the grain futures act.

The CHAIRMAN. I just wanted the matter to be clear. I do not want to rob the committee and our House legislative drafting service of its share of the credit.

Mr. MORRILL. May I say that I think if you will read the record you will find that I did not say the legislative drafting service did not have anything to do with the drafting of the packers and stockyards' act.

The CHAIRMAN. The question by Mr. Kincheloe, as I understood it, was, Was the packer bill drafted by the Agricultural Department? And your answer was, Yes.

Mr. MORRILL. No, sir; so far as we are concerned it is not material whether we had anything to do with it or not. Subsection (b), beginning at line 21, on page 2, says:

"(b) For the purposes of this act (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the grain trade whereby grain and grain products and by-products thereof are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this act. For the purpose of this paragraph the word 'State' includes Territory, the District of Columbia, possession of the United States, and foreign nation."

Mr. KINCHELOE. Is that exactly the language of the packers' bill as near as it is applicable?

Mr. MORRILL. Yes; as near as it is applicable. The only change is in order to introduce grain instead of live stock into the definition, and may I explain right there that that definition is not for the purpose of making the transactions on the future exchanges interstate commerce but for the purpose of establishing a basis upon which the relationship of those transactions on the future exchanges will be shown to the transactions that are in interstate commerce.

Mr. JONES. Before you leave that section, in your judgment would it be permissible to add in the top line of page 3, "products that are sent or are contracted to be sent," or does your definition cover contracts by virtue of the word "transactions."

Mr. MORRILL. I think it is covered, because later it says, "including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture."

Mr. JONES. Yes; I think that covers it.

Mr. STEENERSON. I would like to ask a question right there on this matter. In lines 2 and 3, on page 3, there are the words, "with the expectation that they

being formed with a different intent, was not within the act. The present case is more like Montague & Co. *v.* Lowry (193 U. S. 38).

"It is clear from this that if the bill in the Swift case had averred that control of the stockyards and the commission men was one of the means used by the packers to make arbitrary prices in their plan of monopolizing the interstate commerce, the acts of the stockyards owners and commission men would have been regarded as directly affecting interstate commerce and within the antitrust act. Congress has found as an evil to be apprehended and to be prevented, by the act here in question, the use and control of stockyards and the commission men to promote a packers' monopoly of interstate commerce. The act finds and imports this injurious direct effect of such agencies upon interstate commerce just as the intent of the conspiracy charged in the indictment in the Swift case tied together the parts of the scheme there attacked and imported their direct effect upon interstate commerce."

Then the court goes on further to discuss the Anderson and Hopkins case.

The thing that the Supreme Court was considering was whether or not the transactions with which they were dealing affected interstate commerce and not whether they were in themselves interstate commerce.

Now, in section 3 of the bill——

Mr. KINCHELOE (interposing). Are you now taking up a new section?

Mr. MORRILL. This is a new section I am starting to read that is in this bill but not even in the old bill. Section 3 of the old law is a tax upon puts and calls.

Mr. KINCHELOE. Is there any similarity between this section 3 in the present bill and any section in the packer bill?

Mr. MORRILL. No, sir. This section 3 corresponds to declarations by this committee in its report behind the packer and stockyards act, but there is nothing like it in the packer and stockyards act.

Mr. TINCHER. There is something like it in the packer and stockyards decision, however.

Mr. MORRILL. Yes, sir; very much.

The CHAIRMAN. You may continue your discussion of the bill.

Mr. MORRILL. Section 3 recites:

"SEC. 3. That transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as 'options' or 'futures' are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and by-products thereof in interstate commerce; that the prices of such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of grain and the products and by-products thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling grain and the products thereof in interstate commerce as a means of hedging themselves against possible losses through fluctuations in prices; that the transactions on such boards are extremely susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control which are detrimental to the producer or the consumer and the persons handling grain and products and by-products thereof in interstate commerce, and make such business unsafe and uncertain from time to time; and that such fluctations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and by-products thereof and render regulation imperative for the protection of such commerce and the national public interest therein."

Now, the Supreme Court does not say that that statement is true, but, of couse, if the facts show them to be true they would support this law. It is, of course, for your committee to decide on the basis of the record you have before you whether that statement is true.

Mr. KINCHELOE. That seems to be an hypothesis upon which something else is based. What was the idea there?

Mr. MORRILL. That was for the Congress to say, what it deems necessary to say were transactions on boards of trade.

Mr. TINCHER. The Supreme Court of the United States gave the basis for this. They said they would consider that—that it was proper for the court to consider the thing that actuated the Congress.

Mr. KINCHELOE. I was reading that section last night and wondered what it meant.

Mr. TINCHER. This is a paragraph that may well go in the bill because we have had extensive hearings and nobody has disputed this state of facts; no grain man even has disputed it.

Mr. KINCHELOE. It is more like a whereas before a resolve, is it not?

Mr. TINCHER. Perhaps so.

Mr. JONES. It is a statement as to the jurisdiction of the Congress, I would suggest.

Mr. MORRILL. Yes, sir.

Mr. TINCHER. The Supreme Court approves that for legislation.

Mr. MORRILL. Without confining itself to the record shown by the committee hearings and reports and debates on the floor of the Congress, it declares its conclusions in law.

Mr. KINCHELOE. It seems more a statement than a fact.

Mr. MORRILL. It is quite true that section 3 is not legislation in the sense of regulating the conduct of persons.

Mr. TINCHER. It is a definition.

Mr. MCLAUGHLIN of Michigan. It is a legislative declaration of a determination by the Congress that if the facts exist this is the law.

Mr. MORRILL. You may find in many States statutes on the police powers of the States that such and such a thing is affected by public interest.

Mr. KINCHELOE. It is more or less of a preamble?

Mr. MORRILL. Yes, sir.

Mr. VOIGT. This bill does not repeal the other grain futures act, does it?

Mr. MORRILL. No, sir; and it is not necessary to do so.

Mr. VOIGT. Why would not it be the better policy to repeal the present act with this bill and simply put the taxing clause of the act on puts and calls in this bill, so as to have the whole thing in one act?

Mr. MORRILL. Of course, you could do that. But I would suggest this—and it is merely my suggestion, you understand—that you do not commingle the taxing and regulating provisions in one bill.

Mr. KINCHELOE. We better hold what we have—is that it?

Mr. MORRILL. Yes, sir.

Mr. VOIGT. There is some uncertainty in the Supreme Court's decision as to just what authority is left in the Secretary of Agriculture, is there not?

Mr. MORRILL. No, sir; at least, not according to our own view of it. We do not feel that we have any authority to in any way regulate boards of trade or transactions on those boards or to compel them to keep records or to make reports. Section 9, to which Chief Justice Taft refers, is simply an authorization to carry on investigational work and to make publications just in precisely the same manner as the authorization is given the Bureau of Markets in the annual appropriation acts.

Mr. KINCHELOE. That stays in the bill—section 9?

Mr. MORRILL. Yes, sir.

Mr. VOIGT. Your understanding of the old law is that, after all, what is left of it is the taxation of puts and calls?

Mr. MORRILL. The taxation of puts and calls and authorization to carry on investigational work.

Mr. VOIGT. And you have that same authority in this bill?

Mr. MORRILL. Yes, sir. Having the same authority in this bill and covering precisely the same feld, it would simply take the place of the old act. Section 4 takes the place of the taxing provisions——

Mr. PURNELL (interposing). Before you leave section 3, may I ask you what, in your judgment, is the necessity for this language, beginning in line 13, page 4:

"And that such fluctuations in prices are an obstruction to and a burden upon interstate commerce."

Just what had you in your mind when you say these are obstructions to and burdens upon interstate commerce?

Mr. MORRILL. I mean this, that from time to time there comes about a condition on the future exchanges of extreme movements up or down, without any necessary relationship to cash grain conditions generally, and that in so far as the members of the cash grain trade feel it necessary or desirable to use the future exchanges for heding purposes the hedge is not safe or reliable. In other words, I am speaking now of hedging in cash grain transactions. I think probably I do not need to enter into a discussion of what is a hedge or what the hedging of cash grain transactions may be.

Mr. PURNELL. Oh, no; we had 40 days of that.

Mr. MORRILL. But assuming that there is a good, sound business reason for using the future exchange for the purpose of hedging cash grain transactions, if the fluctuations in prices on future exchanges for any reason are out of harmony with any movement in the cash grain trade your hedge is weakened or lost.

Mr. TINCHER. Right on that subject might be a good place for this: Do you know what has happened on the grain market since the decision of the Supreme Court of the United States on this act?

Mr. MORRILL. Well, I do not want to express an opinion; in fact, I do not think I am competent to express an opinion on the operations of the Chicago Board of Trade, but here is a chart, and the red field shown thereon covers the range between high and low prices on May futures during the months up to May, and between the places where my fingers are you will see the prices during the month of May. That is the high and the low shown there and the black line in the middle is the class. Along about the 1st of May there was a price above $1.45, and then within a few days there was a drop, and then a rise to a price of about $1.48, and then a decline, with a rise again, and then it went down, until on the 27th of May, when the low point of $1.25 or $1.24 was reached, and it has dropped considerable since then.

Mr. TINCHER. I observed in a newspaper article under a Chicago date line that the holding of this act unconstitutional by Chief Justice Taft, on May 15, had resulted in a rise in price of wheat of 4 cents a bushel—for which all of the farmers no doubt would be very thankful. But what was the price of wheat on May 15?

Mr. MORRILL. It was about $1.46.

Mr. TINCHER. And what was the price on May 27?

Mr. MORRILL. On May 27 it was down to $1.25.

Mr. TINCHER. That was after the farmers had had the benefit of the Supreme Court's decision for 12 days. I have not seen any headline announcing that.

Mr. CLARKE. Have you taken into consideration in that chart or have you prepared any other tables giving commodities not affected by the decision of the Supreme Court; have you prepared a schedule like that to show fluctuations in prices of other commodities?

Mr. MORRILL. Yes, sir; we have figures for operations on other future exchanges, but of course conditions in regard to commodities are more or less different. For instance, I would say conditions are hardly analagous as between cotton and grain.

Mr. KINCHELOE. But the fact remains, as Mr. Aswell remarked a few moments ago, that the price of cotton has increased 5 cents a pound in the last month. That is a fact, is it not?

Mr. MORRILL. Yes, sir.

Mr. TINCHER. I am not reflecting on boards of trade, but am remarking what happened in the way of price fluctuations. What was the price of wheat on yesterday?

Mr. MORRILL. July futures on yesterday were $1.12.

The CHAIRMAN. What is the price of cash wheat now?

Mr. MORRILL. I do not seem to have that here. I wonder if Mr. Wells can answer that question.

Mr. WELLS, of Minneapolis. No; I do not know the quotations on the Chicago market.

Mr. TINCHER. But you have the price of wheat on yesterday and also on the day when the court rendered the decision, May 15.

The CHAIRMAN. Yes; and what was that price?

Mr. MORRILL. The price was about $1.48—did not I say that?

Mr. TINCHER. Yes, sir.

Mr. MORRILL. And to-day July wheat is——

The CHAIRMAN. It went down about 32 cents, I believe.

Mr. MORRILL. May closed about $1.16 or $1.17, and July wheat on yesterday was $1.12.

Mr. TINCHER. May wheat dropped from $1.48 to $1.16.

The CHAIRMAN. Is that right, Mr. Morrill?

Mr. MORRILL. Yes, sir.

Mr. KINCHELOE. Let us now proceed with the bill. But before you read the next section is any part of section 4 any part of the original bill or any part of the packer and stockyards bill?

Mr. MORRILL. No, sir.

Mr. KINCHELOE. It is a new section?

Mr. MORRILL. Section 4, beginning on page 4, at line 19, recites——

The CHAIRMAN (interposing). Do you think the record substantiates the statements made in this bill?

Mr. MORRILL. I think so.

The CHAIRMAN. Do you think this committee has made a strong enough case to support the declaration in the bill?

Mr. MORRILL. Of course, I have not gone over the record made before your committee, not in detail at least, but it seems to me from what I have heard about that record, and judging by the character of the gentlemen who have appeared before the committee, their reliability as speakers for the exchanges and against the exchanges and for the cash-grain trade, and so on, that the record does not support the finding.

The CHAIRMAN. It might be well to have the Federal Trade Commission testify before the committee.

Mr. TINCHER. We can come to that later on.

The CHAIRMAN. It is up to the committee to make out a case. I do not think a mere declaration of the Congress is sufficient.

Mr. TINCHER. I will say that I can take the hearings on the grain futures act and confine myself entirely to the statements of representatives of the grain exchanges, and they will substantiate this recital here. I say ever word of it is substantiated by the officers and men prominent in the grain trade.

The CHAIRMAN. If it is already in the record, it is not necessary to add to it, but I asked that question in order that we might have Mr. Morrill's opinion.

Mr. MORRILL. Your committee has on file the report of the Federal Trade Commission on wheat prices for the 1920 crop, published December 13, 1920. I will merely call attention to one paragraph; there is a great deal in this report, but I do not want to burden you with reading so much of it, so I will read from page 57:

"Fluctuations in prices and in the spread between cash and future prices are just as unsatisfactory to one class of hedgers as to another. Such fluctuations mean an imperfect working of the hedge and are occasion for the taking of larger margins by millers as well as by others who have occasion to use the futures market for hedging purposes. On the whole, however, so far as millers can get flour contracts to hedge, they can make a more satisfactory use of futures than elevators in that the tendency of the discount to narrow is in general in their favor instead of against them. It is alleged by some men in the grain trade that millers have been a considerable factor this summer in the wheat-futures market on the buying side, but the weight of the evidence would tend to show that they have been a very much less important factor in this way than has usually been the case.

"The typical opinion with regard to the present wheat-futures market is that it is not satisfactory for hedging purposes, but is better than nothing at all."

Mr. PURNELL. After all the responsibility is upon Congress to settle that issue.

Mr. MORRILL. Yes, sir; and I would not want to leave the impresssion at all that merely writing in section 3 would in itself close the issue; it must be backed by facts.

Mr. PURNELL. And, of course, the first responsibility in that matter is upon this committee.

Mr. MORRILL. Yes, sir.

Mr. VOIGT. Court decisions are to the effect that where testimony varies on a point of this kind it is for the legislative body to draw the right conclusion.

Mr. MORRILL. Yes, sir.

Mr. VOIGT. I take it there is ample evidence in the hearings already held to justify these statements.

Mr. GERNERD. I do not think there is any doubt about that.

Mr. MORRILL. That is a question I think the Supreme Court will consider, as to whether in its opinion the Congress had before it sufficient evidence for the Congress to proceed upon.

The CHAIRMAN. If you will turn to page 10 of the Supreme Court decision I think you will find it is up to the Congress to make good on that declaration, but in your opinion the facts have been established in the record.

Mr. MORRILL. It seems to me so.

Mr. KINCHELOE. You might as well go ahead with your explanation of the bill.

Mr. MORRILL. Beginning on page 4, line 19, section 4, and coming down through page 5 to line 7, is new matter not contained in the future trading act, and is

intending to take the place of the tax imposed by the corresponding part of section 4 of the future trading act. Section 4 reads:

"SEC. 4. That it shall be unlawful for any person to deliver for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication any offer to make or execute, or any confirmation of the execution of, or any quotation or report of the price of, any contract of sale of grain for future delivery on or subject to the rules of any board of trade in the United States, or for any person to make or execute such contract of sale, which is or may be used for (a) hedging any transaction in interstate commerce in grain or the products or by-products thereof, or (b) determining the price basis of any such transaction in interstate commerce, or (c) delivering grain sold, shipped, or received in interstate commerce for the fulfillment thereof."

Mr. KINCHELOE. I see you use the words "interstate commerce" right frequently in there.

Mr. MORRILL. Yes, sir.

Mr. TINCHER. Let me ask you this question. Heretofore we have dealt in the definition "commerce." Now this takes the place of the taxing feature of the other bill, and having defined certain things it is proposed to regulate in this way rather than in the taxing way?

Mr. MORRILL. Yes, sir; it is a straight out regulation.

Mr. KINCHELOE. Are subsections (a) and (b) the same as the old act?

Mr. MORRILL. They are practically verbatim.

Mr. TINCHER. The first real difference is in subsection (f).

Mr. MORRILL. There is some slight change before we come to that.

Mr. KINCHELOE. Suppose you go along and call out the differences in the subsections, where there are any.

Mr. MORRILL. All right.

Mr. KINCHELOE. Are there any in section 4, subsection (a)?

Mr. MORRILL. I think there is no change in subsection (a). But may I say that in going through this we found in the original bill, here and there, little oddities of language which did not seem to us it was necessary for us to repeat.

Mr. KINCHELOE. Well, this will have oddities again by the time it gets through the House and the Senate. I do not know who is responsible for them but we will always have little oddities in a bill in its journey through the Congress.

Mr. MORRILL. Perhaps so.

Mr. KINCHELOE. I take it that all members of the committee have the original act, and Mr. Morrill if you will read the new bill we can follow with the old act and see at a glance just what changes are proposed.

Mr. MORRILL. If you wish me to do that I will be glad to do it.

Mr. TINCHER. I think that is a waste of time.

Mr. CLARKE. I do not think so. I would like to follow it right along through the new bill.

Mr. KINCHLOE. Is there any difference down to section 5, subsection (f)?

Mr. MORRILL. I will go right along with the bill in the regular way if you wish, or I can jump over to it. So far as the subsections (a) and (b) in section 4 are concerned there is no change so far as I recall.

Mr. CLARK. I would rather you would proceed right along in detail. I want to make certain that I understand this matter this time.

Mr. MORRILL. Very well. On page 5, line 8, we have:

"(a) Where the seller is at the time of the making of such contract the owner of the actual physical property covered thereby, or is the grower thereof, or in case either party to the contract is the owner or renter of land on which the same is to be grown, or is an association of such owners, or growers of grain, or of such owners or renters of land."

Mr. KINCHELOE. That is the same verbatim.

Mr. MORRILL. Yes, sir. Now the next section is:

"(b) Where such contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a 'contract market,' as hereinafter provided, and if such contract is evidenced by a memorandum in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: *Provided*, That each board member shall keep such memorandum for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, which record shall at all times be open to the inspection of any representative of the United States Department of Agriculture or the United States Department of Justice."

Mr. KINCHELOE. That is the same.

Mr. MORRILL. Yes, sir. Now we come to section 5. This carries a little change in phraseology, and then subsection (a) also carries a change to which I will refer:

"SEC. 5. That the Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a 'contract market' when, and only when, such board of trade complies with and carries out the following conditions and requirements:"

Mr. PURNELL. That is the same in substance.

Mr. MORRILL. Substantially so, yes. Now I will take the next section:

"(a) When located at a terminal market where cash grain of the kind specified in the contracts of sale of grain for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the grain and the differences in value between the various grades of such grain, and where there is available to such board of trade official weighing and inspection service approved by the Secretary of Agriculture for the purpose."

Mr. KINCHELOE. There are two differences there.

Mr. PURNELL. It requires the approval of the Secreatry of Agriculture.

Mr. MORRILL. The only difference that is important to consider, I think, is the last one. May I say that when you get into administrative work, trying to carry out one of these laws, people come with all sorts of arguments to you about the language, and there was one small point in this that I think we have to overcome. There is nothing in that change in reference to approval by the Secretary of Agriculture that is designed to get at anything in Chicago or Minneapolis or these larger markets where there is an established inspection and weighing service that we know is satisfactory to the grain trade. But there were certain small markets that applied to us for designation where there was no such official weighing and inspection service.

I will give you an illustration: A small southern market, in one of the Southeastern States, applied to us for designation as a contract market. As a matter of fact, I did not state to them anything that I thought about their inspection and weighing. The way the matter was disposed of was by calling attention to the fact that they did not deal in futures as covered by this bill; but, as a matter of fact, if they had dealt in futures we would have been compelled to tell them they did not have a weighing and inspection service that would be satisfactory, because they did not have anything of that kind. It is a market that handles a total of about 300 cars of grain in a whole year.

Mr. TINCHER. They just thought they wanted it.

Mr. MORRILL. As a matter of fact, what they were seeking was advertising. They wanted action by the Secretary of Agriculture for the advertisement it would give their particular community. Now, that is the reason for this particular change in language. It has been suggested to me that we were possibly trying to lay the basis for disturbing some established official weighing and inspection service in one of the big markets. That was not in our minds at all.

Mr. STEENERSON. Would not this confer upon the Secretary of Agriculture authority to substitute a Federal means for State weighing in Minneapolis now?

Mr. MORRILL. No; it does not involve that possibility at all.

Mr. JONES. Let us go ahead with a discussion of this bill.

Mr. STEENERSON. You have not substituted Federal inspection and weighing of stock, have you?

Mr. MORRILL. No, sir.

Mr. TINCHER. Your own courts did that.

Mr. STEENERSON. But if we had not had an act of Congress it could not have been done. As I understand it, the weighing in the stockyards is under the authority of the Federal Government now?

Mr. MORRILL. Not unless it has hapened within the last 24 hours, because I have not been advised of it. We have a representative of the packers and stockyards section of the Department of Agriculture at South St. Paul now, Mr. Gore, who is conferring with the parties there as to Federal weighing, but no decision has been reached. This law does not carry any authority to the Secretary of Agriculture to do otherwise than determine whether he approves or disapproves this particular weighing service.

Mr. STEENERSON. That is what I wanted to know.

Mr. CLARKE. Whether those 11 men up there have jobs under the Federal or the State Government; that is it, I take it.

Mr. MCLAUGHLIN of Michigan. This bill does not provide that the Secretary of Agriculture shall control weighing and inspection.

Mr. WILLIAMS. Let us proceed.

Mr. MORRILL. We will next take up subdivision (b), beginning on line 17, page 6 of the bill:

"(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the parties to all such transactions."

And here are the words inserted, "including the persons for whom made"

Mr. CLARKE. What is the new part there?

Mr. MORRILL. That is the new part, these words only, "including the persons for whom made."

And then it goes on:

"Any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice."

Now, as a matter of fact, under the future trading act we felt we did have authority to get that information as to the parties for whom made, but some people seemed to be doubtful, and it seemed to us in rewriting this language that we should insert it so as to make it clear.

Mr. CLARKE. Do you mean that is in the decision?

Mr. MORRILL. No; I mean in the matter of interpreting the statute, with reference to its constitutionality.

The CHAIRMAN. You may proceed.

Mr. MORRILL. We will now take up subsection (c):

"(c) When the governing board thereof provides for the prevention of dissemination through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication, by the board or any member thereof, of false, misleading, or inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of grain in interstate commerce."

Mr. KINCHELOE. There is some new matter there.

Mr. MORRILL. We have made such changes there as were necessary to make a direct connection with interstate commerce.

Mr. MCLAUGHLIN of Michigan. Does that include local telephone information or communication?

Mr. MORRILL. No; I think not. I do not think that would include local telephone communications.

Mr. JONES. It would include the local mails, however,

Mr. MORRILL. Yes, sir. But I want to say this, that possibly under the theory of the bill it is not necessary to make any such limitations as have been made here, for when you get to such cases you have probably all the supervision you need anyhow.

Mr. TINCHER. I do not suppose there will be any quarrel with the exchanges about that. They are willing to put into effect any rules and regulations necessary to stop false market reports.

Mr. MORRILL. Yes; I may say that boards of trade have shown without exception, through their official bodies, every evidence of a desire to cooperate with the Department of Agriculture and to do everything they can reasonably do to carry out the purposes of Congress under the future trading act. We have had no difficulty from the boards of trade on that score.

Mr. TINCHER. That is an evil they all wanted to get rid of; that is, the sending out of false market reports. I have never heard anyone defend any person who would do such a thing; I have never witnessed or heard of anything that tended to show anyone wanted to uphold anything of that kind.

Mr. CLARKE. There is a wide variety of opinion as to what the market will be for wheat, corn or any other agricultural product; of course, men will differ as to what the market in the future will be for such things.

The CHAIRMAN. Mr. Morrill, you may proceed.

Mr. MORRILL. The next subsection is:

"(*d*) When the governing board thereof provides for the prevention of manipulation of prices or the cornering of any grain by the dealers or operators upon such board."

Mr. KINCHELOE. That is the same.

Mr. MORRILL. Yes, sir. The next section is:

"(*e*) When the governing board thereof admits to membership in and all privileges on such board of trade, under such terms and conditions as may be imposed lawfully on other members of such board"—

There is a change for the purpose of expressing the thing about which there has been some question—

"any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in cash grain business in interstate commerce: *Provided*, That no rule of a contract market against rebating commissions shall apply to the distribution of excess earnings among the bona fide members of any such cooperative association."

Now, the question has been raised and will be raised as to whether that subdivision (*e*) as a part of a new regulatory law under the interstate-commerce power is reasonably related to the object to be accomplished, whether it is necessary to provide for the admission of cooperative associations to membership in the accomplishment of the general purpose of the bill.

Mr. TINCHER. I am willing to admit that it is if Brother Steenerson will admit it. What do you say about that, Mr. Steenerson?

Mr. STEENERSON. Well, we will see.

Mr. CLAGUE. Let us not get into any outside argument.

Mr. MCLAUGHLIN of Michigan. I have not followed the old act as you have read it. What was the change there?

Mr. MORRILL. The change began on line 5, the last word, and runs into lines 6 and 7, being:

"Under such terms and conditions as may be imposed lawfully on other members of such board."

Mr. MCLAUGHLIN of Michigan. What law relates to it now?

Mr. MORRILL. I did not catch your question, Mr. Congressman?

Mr. MCLAUGHLIN of Michigan. Speaking of the word "lawfully," what does it refer to?

Mr. MORRILL. Such matters as discipline and payment of assessments.

Mr. STEENERSON. And arbitration.

Mr. MORRILL. Yes; arbitrations and things of that kind.

Mr. MCLAUGHLIN of Michigan. The idea was to provide that these cooperative associations could not be excluded simply because they were cooperative associations or because there was a rebate allowed, sometimes called splitting commissions, to members of the associations. I have always felt that these local associations ought to be permitted to come in, and permitted to come in only in case they do as everybody else does and play the game fair. There ought to be some control over them. They ought not to be exempted from any provision in any act of Congress; if there is anything improper or unreasonable about them or they do not play the game fair, of course they ought not to come in.

Mr. MORRILL. That is the purpose of changing the language there, to make it clear that they are not exempt from other requirements or control of an exchange, except in reference to the payment of patronage dividends.

Mr. JONES. That is, they are to be subjected to all of the regulations of a board of trade except as to distribution of dividends?

Mr. MORRILL. Yes, sir.

Mr. JONES. Do you think it would be possible under that condition for a board to put in effect some other requirements that would exclude them by virtue of the character of their organization?

Mr. MORRILL. If a board of trade should establish a rule which was not applicable to all other members alike and which had the effect of excluding them without any apparent justification, it seems to me it might be held that they were not carrying out the law.

Mr. KINCHELOE. You expect them to be held to all portions of the law except that they will be permitted to pay patronage dividends?

Mr. MORRILL. Yes, sir.

Mr. MCLAUGHLIN of Michigan. I was wondering if that term "lawfully" were up to some court to determine the reasonableness of a regulation, or an attempt to exclude some association, what would be the effect of the ruling thereon.

Mr. MORRILL. I will give you an illustration of the kind of question that was raised in the hearing at Chicago preceding the designation of the boards of trade as contract markets. At that time Mr. Clifford Thorne appeared representing, if I remember correctly, the American Farm Bureau Federation, and asked certain questions of representatives of the exchanges. Among them he raised the question whether the board, through the fact that it made certain requirements as to admission to membership, such as the necessity for having two sponsors for an application, might keep a cooperative association out on the ground that it could not get the two sponsors required. Mr. Griffin, who was then president of the exchange, answered by saying that he would personally be one sponsor for any association coming within the provisions of this law, and he would guarantee to get another. Mr. Thorne was not entirely satisfied with that promise, and feared that without regard to anything Mr. Griffin might state it still might happen.

It was our feeling if the only thing that stood in the way of a cooperative association getting membership was the absence of two sponsors, and it could not be shown as a matter of fact that it was not financially responsible or a nonlaw-abiding organization, that it had not met the requirements in other respects made of other members of the exchange, then it could not be said it had not complied with the requirements of the law.

The CHAIRMAN. What about efforts to determine the legality of any and all questions that may arise?

Mr. MORRILL. It is possible that that may be used as an argument in seeking to enjoin the enforcement of this law, the same as was done in seeking to enjoy the enforcement of the future trading act. Mr. Hill and others with him based a part of their argument on the provision admitting cooperative associations to membership.

The CHAIRMAN. In that way there might be no end to the litigation, all sorts of questions being raised.

Mr. TINCHER. What the chairman means is that every time a cooperative association——

The CHAIRMAN (interposing). Every time a question is raised it would have to be determined by a court.

Mr. TINCHER. I do not know how you could avoid that sort of thing.

Mr. MCLAUGHLIN of Michigan. Wasn't there something in the old act requiring the Secretary of Agriculture to pass upon the reasonableness of regulations?

Mr. MORRILL. This is the same as that in that respect. These are the conditions under which a contract market may obtain its designation and retain that designation, and the Secretary of Agriculture is authorized to determine whether those conditions have been met. And there is a procedure prescribed here, just as there was in the old bill, for taking up the question at any time it appears they are not continuing to comply with the conditions set out.

Mr. JONES. Are those terms and conditions to be prescribed by the Secretary of Agriculture or by the board, or both?

Mr. MORRILL. By a governing board. It starts out by saying, "by the governing board."

Mr. JONES. The point I suggested awhile ago was, would it be possible for one of these boards of trade to figure out some condition other than distribution of excess profits that would enable them to exclude a cooperative association?

Mr. TINCHER. The Secretary of Agriculture would not allow them to do that.

Mr. MORRILL. I think it would be a questtion of fact in each case whether it was a reasonable or unreasonable requirement.

Mr. KINCHELOE. They could have done that under the original act.

Mr. JONES. Does this bill enable the Secretary to say that?

Mr. MORRILL. It enables him to say: You are not meeting the conditions, and therefore your designation as a contract market will be taken away from you.

The CHAIRMAN. Do not you think the Secretary should be given power to determine the question, subject to court review?

Mr. MORRILL. It is determined by the Secretary and by the commission.

The CHAIRMAN. How is it in the first instance?

Mr. MORRILL. It is determined in the first instance by the Secretary and by the commission, and it is subject to review by the courts.

Mr. KINCHELOE. It was the same in the original act?

Mr. MORRILL. Yes.

Mr. MCLAUGHLIN of Michigan. My recollection is that it was taken up in the House and that some one offered an amendment.

Mr. GERNERD. You offered an amendment.

Mr. MCLAUGHLIN of Michigan. I had something to do with it but do not know who framed the amendment.

Mr. MORRILL. There was something in the way of an amendment in the House that had that in view.

Mr. MCLAUGHLIN of Michigan. To put up to the Secretary of Agriculture to determine whether these regulations as to admission to membership were reasonable.

Mr. MORRILL. I think that would follow anyhow, because these are conditions of designation.

Mr. MCLAUGHLIN of Michigan. Of course, he makes the suggestion of regulation, and perhaps may actually make the regulation in the first instance, but this would be some authority to pass on it.

Mr. GERNERD. Would it be possible to clarify this very section by inserting that the Secretary of Agriculture shall pass on it?

Mr. CLAGUE. That is already in it.

Mr. MCLAUGHLIN of Michigan. I do not know what that word "lawfully" means because there is no other law relating to it. It may be that a board of trade can make any kind of regulation that is not forbidden by law and it will be lawful.

Mr. KINCHELOE. It is that word "lawfully" that I wondered about. Does it mean anything anyhow?

Mr. MORRILL. Suppose you read it with the word "lawfully" left out.

Mr. STEENERSON. You might say "reasonably" imposed.

Mr. MORRILL. It seems to me you have some qualifying clause.

Mr. MCLAUGHLIN of Michigan. I do not see why you should say "other members of the board" because any other member seeks admission under the same circumstances.

Mr. MORRILL. They do it under the same circumstances except as to patronage dividends.

Mr. KINCHELOE. I understand that the same rules as to admission apply to all, except as to distribution of dividends.

Mr. MORRILL. That is all.

Mr. KINCHELOE. I do not see where the word "lawfully" really has anything to do with it at all. I think it is all right without that word. Strike it out and say "as may be imposed by the board."

Mr. MCLAUGHLIN of Michigan. I have no objection to a court reviewing it. I think a man should have his day in court on about everything.

Mr. KINCHELOE. So do I.

Mr. MCLAUGHLIN of Michigan. But I do not know what the word "lawfully" here means.

Mr. MORRILL. I make no particular point about that word, or even about the whole clause.

Mr. CLARKE. Do you think it is necessary to put this in?

Mr. MORRILL. Yes, sir. The object to be accomplished was the thing I had in mind, to place them all on a parity with other members of the board in all respects, so that the only distinction that could be made between them and others is the question involved in the payment of patronage dividends. There are other things that a board undertakes to regulate with respect to its members, that are not in any way covered by this bill, but presumably are covered either by statute or the common law in the States where they operate.

Mr. KINCHELOE. Do you really think that the word "lawfully" has any significance there; I mean answering the question as a lawyer?

Mr. MORRILL. I think it is significant. I think it would enable us to deal a little more satisfactory with arguments that might come up as to regulation, as to conditions that might be imposed, as was suggested from the other side of the table awhile ago, with the object in view of excluding a cooperative association without making it appear that way.

Mr. TINCHER. There are some States that have legislation on the question of cooperative associations.

Mr. MORRILL. Yes; I think Missouri and Minnesota have legislated on that matter.

Mr. KINCHELOE. Let us take up section 8.

The CHAIRMAN. It is now mandatory on the Secretary to admit these boards of trade if they are good.

Mr. MORRILL. It is absolutely mandatory on him.

Mr. CLARKE. There is no discretion left to him?

The CHAIRMAN. Where in this bill does it provide that the Secretary may determine the question of lawfulness?

Mr. MORRILL. That is, as to whether they have made proper terms and conditions.

Mr. TINCHER. It is just like the old bill in that respect.

The CHAIRMAN. Where do you give the Secretary of Agriculture power to determine the question of lawfulness?

Mr. MORRILL. In section 2 it is provided that any board of trade desiring to be designated a contract market shall make application to the Secretary of Agriculture for such designation and accompany same with a showing that it complied with the above conditions and with a sufficient assurance that it will continue to comply with the above conditions.

The CHAIRMAN. That is a promise to be good, but suppose they are not good?

Mr. MORRILL. Following that up, on page 9, beginning line 12:

"(*a*) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a 'contract market' upon a showing that such board of trade has failed or is failing to comply with any of the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5."

The CHAIRMAN. That is as the commission may determine. But where do they determine the question of lawfulness? Does not that have to be determined by a court?

Mr. MORRILL. The question of lawfulness is one of the things embraced in the terms and conditions set out in section 5.

The CHAIRMAN. Who determines whether it is lawful or not?

Mr. MORRILL. Necessarily, in order to determine whether they are entitled to designation as a contract market or not, the Secretary of Agriculture and the board would have to consider whether they had imposed lawful conditions.

The CHAIRMAN. Would that be set out in the application, or provided in detail in their rules and regulations?

Mr. MORRILL. They have to set out in their application facts that are necessary to show that they come within this law, and to furnish with their application all their rules and regulations, their forms of contract, and the like, to enable the Secretary to determine whether they meet the conditions.

Mr. TINCHER. There is some objection to subsection (f). I wish you would get to that.

Mr. MORRILL. Subdivision (f), page 8, beginning line 15, is entirely new. It is not embraced in the future trading act.

"(f) When the governing board thereof provides for making such changes from time to time in the terms and conditions of the forms of contracts of sale to be executed on or subject to the rules of such board as may be necessary to remove or overcome any material prejudice or disadvantage to sellers or buyers thereof found by the Secretary of Agriculture after investigation and public hearing and communicated by him to such board, which substantially affects the price or prices of such contracts so as to render them hazardous or unreliable as hedges or price bases for transactions in interstate commerce in cash grain or the products or by-products thereof.

Mr. KINCHELOE. What does that mean?

Mr. MORRILL. That language is designed to cover questions which arise from time to time in the cash-grain trade and on the futures markets as to terms of contracts in their application to sellers and buyers. Such, for example, as the matter of fixed or arbitrary discounts between the grades deliverable on a contract as distinguished from commercial discounts; such as the question whether the grades deliverable on a contract are such as to afford opportunity for depressing the market or getting it out of line with true commercial conditions;

or the question that has arisen from time to time as to the capacity of storage in the market available for delivery of grain on contracts.

I use these as illustrations because these are the thing that come up quite generally for discussion in the cash-grain trade and are embraced in letters to the Secretary of Agriculture from time to time making complaints about future exchanges. And an analysis of these conditions will show that they do affect the price of a contract. It is necessarily the case that any substantial condition in a contract affects its value to the seller and the buyer.

Mr. CLARKE. Mr. Chairman, we can not possibly finish this hearing to-day. Let us adjourn. I want to get over on the floor, and still I want to be here when this hearing is going on.

The CHAIRMAN. This is all new matter.

Mr. MORRILL. Subdivision (f) is enirely a new matter.

Mr. KINCHELOE. It is not even subdivision (b) of section 6.

Mr. MORRILL. No, sir; it is not the same as any provision in the old bill.

Mr. TINCHER. Is there any substantial difference besides in this subsection (f)?

Mr. MORRILL. There is no substantial difference after subsection (f) except section 7 of the old bill is eliminated because it only relates to the taxing provision of the old bill, and section 9 of the new bill is changed in the penalty clause merely to correspond with the change of provisions from a taxing measure to an interstate commerce measure.

Mr. CLARKE. I would like to go into all these in detail and we can not do it now.

Mr. TINCHER. Let us find out how much time is desired by the gentlemen representing the exchanges. Can Mr. Wells tell us?

Mr. WELLS. I will say a very short time. Is it my understanding that you do not care to hear anything at all except on the new features of this proposed legislation?

Mr. TINCHER. That is all. I now make a motion that we hear the other side to-morrow morning.

Mr. RAINEY. I do not think we ought to limit the other side to to-morrow morning's session. If they make an effort to get through as quickly as they can I do not think we ought to limit them.

Mr. TINCHER. Well, as a matter of courtesy to these gentlemen who have come from a distance I am proposing that we give them to-morrow morning, and if it should turn out that they can not possibly get through to-morrow we can decide that then.

(The motion was duly seconded and unanimously adopted.)

The CHAIRMAN. The committee will now stand adjourned until to-morrow morning at 10 o'clock.

(Whereupon, at 12 o'clock and 5 minutes p. m. the committee adjourned until to-morrow, Thursday, June 8, 1922, at 10 o'clock a. m.)

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Thursday, June 8, 1922.

The committee met at 10 o'clock a. m., Hon. Gilbert N. Haugen (chairman) presiding.

There were present: Mr. Haugen, Mr. Purnell, Mr. Voigt, Mr. McLaughlin of Nebraska, Mr. Riddick, Mr. Tincher, Mr. Williams, Mr. Hays, Mr. Thompson, Mr. Gernerd, Mr. Clague, Mr. Clarke, Mr. Rainey, Mr. Aswell, Mr. Kincheloe, Mr. Jones.

STATEMENT OF HON. WALTER H. NEWTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA.

Mr. NEWTON. Mr. Chairman, as I have to leave for another committee meeting, I would like to make a brief statement in connection with the pending measure.

On page 6 there is a change in the present bill as compared with the provisions in the present law, which, in the judgment of the officials of the State of Minnesota, would seriously interfere with the present method of grain weighing and their own service. I refer specifically to the provision with reference to contract markets and the provision where the Secretary of Agriculture is

given in effect veto power over the action of a State agency. Various protests have come to me from the office of the governor and from the railroad and warehouse commission protesting against subjecting the State service, about which there has been no complaint, so far as I know, to the veto power of a Cabinet officer.

Mr. KINCHELOE. Was not that in the original act?

Mr. NEWTON. No; it was not in the original act.

Mr. KINCHELOE. What section is that?

Mr. CLAGUE. Section 5a.

Mr. NEWTON. Commencing on line 13 of page 6 the change is "and where there is available to such board of trade official weighing and inspection service approved by the Secretary of Agriculture for the purpose." So that on a contract market, if the Secretary of Agriculture does not care to approve the inspection service of the State of Minnesota he withholds his approval, no matter what kind of system we may have. Now, we have the utmost confidence in the present Secretary of Agriculture, but as a matter of principle we do not feel that a State service of this kind, operating under a State law, ought to be subjected to the veto power or the approval of the Secretary of Agriculture.

Mr. KINCHELOE. Did he recognize your State in the original act?

Mr. NEWTON. Oh, yes; there was no trouble at all, but it merely sets a precedent here which it seems to us is a very bad precedent both as it affects this particular business, for one thing, and very bad as a principle of constitutional law.

Mr. JONES. Have you talked that particular phase over with any of the officials of the department?

Mr. NEWTON. I have not; no.

Mr. JONES. You do not know what their attitude is with reference to that change?

Mr. NEWTON. I do not know, because I would prefer talking it over with the members of the committee.

Mr. CLAGUE. Mr. Morrill said yesterday that they really did not intend to make any change. That was the statement he made to Mr. Steenerson, but we prefer to have it as it is in the old law.

Mr. NEWTON. I know they have never had any expressed or announced intention of making any change, but this would establish a precedent which would permit it, and if there should be a change in the office of the Secretary of Agriculture he might think differently from the present Secretary of Agriculture.

Mr. JONES. Do you think there is any great amount of difference in the language.

Mr. NEWTON. Yes; very much so, because in the proposed bill it is all up to whether or not the service is approved by the Secretary of Agriculture.

Mr. JONES. In the original act the language is, "and having recognized official weighing and inspection service."

Mr. NEWTON. But the question of recognition there is a question of fact that is not necessarily to be left arbitrarily to the Secretary of Agriculture.

Mr. JONES. Would not the Secretary of Agriculture under the original act pass on the question? Would he not be the one to pass on the question of having a recognized official weighing and inspection service?

Mr. NEWTON. But not arbitrarily, as he would have the power under the bill as it is written here. Under this language it is made subject to his express approval, and he can approve or disapprove as he sees fit.

Mr. JONES. Under the original act could he not say that it was not a recognized official weighing and inspection service?

Mr. NEWTON. But the word "recognized" is not whether he would recognize it, but whether, as a matter of fact, by custom, by practice of shippers and of buyers that is a recognized market.

The CHAIRMAN. Would you prefer the language in the cotton futures act?

Mr. CLAGUE. No; we want the language in the old grain future act, which is on page 2, the last words in section 5a. "and having recognized official weighing and inspection service."

The CHAIRMAN. I take it that all of us are in favor of the official grades and standards.

Mr. CLAGUE. This does not refer to the grades.

Mr. KINCHELOE. Is not that the language that Mr. Morrill referred to in connection with some southern concern that wanted it, and wanted it in order to get some advertising out of it?

Mr. CLAGUE. I do not recall.

The CHAIRMAN. Let me call your attention to the language of the cotton futures act; the same object is sought to be accomplished in this act:

"Second. Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary of Agriculture."

The Secretary establishes the standards. There must be some way of ascertaining the value and quality of the product described in the contract. What standard do you want; the Minnesota standard or the official standard?

Mr. NEWTON. The point here, as I see it, is that under the existing law there has been no complaint, and there has been no announced reason for a change, and here, without any apparent reason for a change, comes a proposed bill, which subjects the whole matter to the absolute approval or disapproval, with reason or without reason, of the Secretary of Agriculture. Now, if there is a reason for that change, we ought to have it.

The CHAIRMAN. There certainly should be no question as to the standards and the grades to be applied. There has to be some standard. Shall it be the Minnesota standard, the Federal standard, or the Kansas standard, or what?

Mr. TINCHER. Mr. Newton, you are going to be here right along?

Mr. NEWTON. Yes; but as I announced at the start, I must now go to another committee meeting, and I wanted to present the protest of the members of the Railroad and Warehouse Commission of Minnesota and also the protest from the governor's office.

Mr. KINCHELOE. My recollection is that Mr. Morrill covered that point very fully yesterday.

Mr. NEWTON. Unfortunately I had to leave before Mr. Morrill concluded and I did not hear his complete statement, but I intended to read it when it was printed.

Mr. KINCHELOE. I do not remember his exact language, but I think he covered that point.

Mr. CLARKE. H's statement with regard to that paragraph was that there were two slight changes in it.

Mr. KINCHELOE. And he gave the reasons for this change when he cited the case of this southern concern.

Mr. CLARKE. Yes; with reference to the publicity and the advertising value connected with it.

Mr. WELLS. Mr. Chairman, as you gentlemen know, it has only been within a few days that this bill has been available to the grain trade of the country; in fact, the latter part of last week before we saw a copy of the bill. We have taken you at your word, as we understood your wishes, and we have not seen fit at this time to call any large number of people to testify before you. We understood you wished to hear comments on the new features of the bill alone. We could have called in a large number of millers and others interested, but we thought that the opinion of all could be expressed by a few, thus saving your time. Mr. Gates, of Chicago, has been over the bill as carefully as any of us, I think, and I would ask that he be heard touching the various new features of the bill.

STATEMENT OF MR. L. F. GATES, MEMBER OF THE FIRM OF LAMSON BROS. & CO., CHICAGO, ILL.

Mr. GATES. Mr. Chairman, yesterday you discussed with a representative of the Department of Agriculture the question as to whether you could legally do this thing. You will not expect me to follow that discussion because I have neither the ability nor the disposition to touch upon the legal phases, but I would like to discuss with you, briefly, as to whether you should do it even if you have the legal right to do it, and what the practical effect of the law would be, touching only on the new features of the bill, in the main, but, briefly, on some of the matters which were up before the Senate committee but which have not been discussed before this committee.

I am sure no one here will seriously expect us to favor a bill of this character, but I would like to go a little further than that and say that we will not approve or favor any bill that carries the degree of control which this bill carries.

This, as I understand it, is not an attempt to regulate commerce in grain—interstate commerce in grain. It is simply an attempt, through the invocation of the commerce act, to put future trading, which is a purely intrastate transaction, under the control of the Secretary of Agriculture.

The first suggestion I have for you, if you will permit me, is on page 2 of the bill, H. R. 11843. You have defined almost everything except what a cooperative association of producers is. Inasmuch as you have included in this bill, section 5, peragraph—certain conditions, and imposed certain conditions in regard to the admission to the exchanges of cooperative societies, and inasmuch as there is a good deal of misunderstanding I think even among the members of this committee from the talks I have had as to what a cooperative association of producers is, I think it might be well to define that just as you defined a board of trade.

On page 3, section 3, line 18, for the first time you attempt to clothe future trading with a national-public interest; in other words, to make a national utility of the future trading on the boards of trade. Now, I believe that is entirely new. I do not believe you have any national-public utilities, as far as I know, nor do I find any indication that the subject matter of this bill is along the line of previous efforts to clothe anything with a public interest; that is, there has been a disposition heretofore when anything was clothed with a national interest to simply specify that it should give service to all alike. Now, there is no claim that the exchanges are not giving service to all alike on equal terms. What, then, is the idea—I simply suggest this for consideration by the committee—of clothing the future trading on boards of trade with a national interest.

We come next to page 4, and among other statements that are made are these:

"That the transactions on such boards are extremely susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation," and so on and so on, making such business unsafe and uncertain from time to time.

Now, if you will go back over the hearings, you will find that grain men from all over the country came here to testify that this was an essential part of their conducting business safely. There was nothing said about this making it unsafe. There was no testimony anywhere in the record to indicate that there were frequent atttempts at manipulation. It was specified, when it was mentioned at all, that they were of infrequent occurrence, and that they were very difficult to bring about under the conditions under which the market is controlled.

In this section, section 3, you seem to state that the whole purpose of the bill is to do away with speculation, manipulation and control, and yet when you come to your penalty clauses, you do not make such actions criminal at all, but you do make it criminal for a man to carelessly allow, through one of his employees, an inaccurate report to be mailed out. That is a criminal offense, but you do not even make it a criminal offense to manipulate the market. Now, there must be some reason for that, which is not found on the service, and that reason appears to be this: That you do not need any new law in order to prosecute a man who attempts to manipulate or corner the market. In the Patten case the prosecution was under the antitrust law. You have plenty of power to control the matter of manipulation or cornering through the antitrust law. You do not need a new law for that, and yet, as stated here, the whole purpose of the bill is to do away with manipulation and control.

Mr. CLARKE. Just there, for a moment. I have it still in my mind that in the Government's effort to run down these manipulations or corners in these products, the Government was never able to get hold of the information and records of the transaction. Has that, in any way, been cured?

Mr. GATES. That is not true, in the first place.

Mr. CLARKE. Is there now a record that is always available to the Government?

Mr. GATES. There always has been.

Mr. CLARKE. Of every transaction?

Mr. GATES. There always has been.

Mr. CLARKE. I did not realize that.

Mr. GATES. The Federal Trade Commission and the Bureau of Markets have been for five years jointly investigating the grain trade. They have not been denied access to any documents of any kind, so far as I know.

Mr. CLARKE. Are those records with reference to efforts to corner the market like in the Patten corner, available?

Mr. GATES. That would appear from the records of individual houses. The board of trade keeps no record of the transactions of the individual members. The entire history of any cases of that kind, so far as that history has been

written up by historians of the board, is available to anybody, and the documentary evidence in regard to all those things has always been freely at the disposal of governmental agencies, even though there is no legal obligation on the part of the board members to disclose it, except so far as corporations are concerned.

Mr. CLARKE. I am certain, or at least it is my recollection, that in the previous hearings we had on this bill one of the difficulties that the Government contended it had was that they could not get track of many of these transactions in one way or another; that when they tried to run down the details of them they could not get the details like they could with reference to transactions, for instance, on the stock exchange in New York, where there is always a permanent record available, and at the close of business on each day or on the next day there is published a detailed record of the transactions that occurred, where they originated, and the whole scheme of the thing.

Mr. GATES. I think that is a mistake. The New York Stock Exchange, as I understand, records each separate transaction and the volume of it. The individual member of the stock exchange keeps the confidential information as to who the order came from; that is, where the order originated is not disclosed.

Mr. CLARKE. Under your present practices, could the Government run down the origin of every order that goes through your exchange, for instance.

Mr. GATES. Yes; they have done so in the Federal trade investigation.

Mr. CLARKE. How recently?

Mr. GATES. Within the past five years? It has never been denied them although there is no law to give them that authority.

Mr. JONES. I understood one of the witnesses to state, I do not know whether it was Mr. Griffin or not, that they did not keep the records of the individual members who dealt in these transactions.

Mr. GATES. They do not, and I will come to that when I come to the matter of reports.

Mr. TINCHER. Mr. Chairman, in order to facilitate matters, I would like to make this suggestion, if it is agreeable to the witness, that the witness be permitted to finish his statement and each member make notes of such questions as he wants to ask, and after the witness has finished, each one of us will take turns and ask our questions.

Mr. GATES. This question was right in point here. Was there any objection to that?

Mr. TINCHER. I notice that when the witness was before the committee before he asked to be allowed to do that.

Mr. GATES. Yes; I asked that, and it is usually my preference to finish my statement and then gladly to submit to any questioning that any member may have.

The CHAIRMAN. Then you would prefer to conclude your remarks before you are asked questions.

Mr. GATES. The thing I wish to bring home to you is this: That you are not providing any criminal punishment for the thing that is the most serious charge made in your bill. We do not admit the charge, but we say that if you want to stop it you ought to make it at least as serious as it is to carelessly send out an inaccurate report.

There are two courses of action open to the exchanges under the bill as drawn.

Paragraph (a) of section 4, if complied with, will permit the exchanges to function in a very limited way and avoid all this interference by the Department of Agriculture or control by the Department of Agriculture or the necessity of taking out a designation as a contract market, if it is your wish that we should limit our activities to paragraph (a) of section 4; but that would give you a very unsatisfactory market, and there is no one who would suffer from an inadequate market as much as the producer himself.

Subsection (b) of section 4, page 5, is the next paragraph I want to refer to, and I simply wish to suggest this question to the committee: You make a provision there that each board member shall keep such memorandum for a period of three years. The legality of the contract under [illegible] would depend apparently on keeping the memorandum for a period of three years. Now, suppose the transaction is questioned in the meantime, must you wait until the end of three years and then find whether the records are still on hand to determine whether the transaction, when originally made, was legal? If

not, then you might well cut that out. I think the larger part of paragraph (b) is a duplication of what comes later.

Mr. KINCHELOE. Does it not say in that paragraph, "which record shall at all times be open for inspection"?

Mr. GATES. Oh, yes, sure; and you make that provision later on, too, so far as the records are concerned.

Mr. KINCHELOE. Then it would not have to be there for three years?

Mr. GATES. It is provided that each board member shall keep such memorandum for a period of three years. You say that the law shall not apply where such contract is made by or through a member of the board of trade which has been designated by the Secretary of Agriculture as a contract market, if such contract is evidenced by a memorandum, and so on, provided that each member keeps that memorandum for three years. That is made one of the provisions for making the contract a legal contract.

Mr. CLARKE. I do not get that clearly. Just explain that again, please.

Mr. GATES. You provide that a man shall not be subject to all these penalties if the contract is made in a contract market, and if such contract is evidenced by memorandum in writing showing the date, the parties to the contract, their addresses, etc., provided that that record is kept for three years. If you lose the memorandum it would apparently make the transaction, when originally made, illegal; that is, it takes three years to determine whether or not the transaction was legal in the first place.

Mr. JONES. I think that refers to the authority to operate. They must provide for the keeping of these memorandums for three years before the license is granted as contract market.

Mr. GATES. I am just suggesting that to you.

Now, we come to page 6, paragraph (a), and I will read that whole section:

"(a) When located at a terminal market where cash grain of the kind specified in the contracts of sale of grain for future delivery to be executed on such board"—

That is new—

"is sold in sufficient volumes and under such conditions or fairly to reflect the general value of the grain and the differences in value between the various grades of such grain"—

Now, this is new—

"and where there is available to such board of trade official weighing and inspection service approved by the Secretary of Agriculture for the purpose."

Mr. TINCHER. That is new?

Mr. GATES. Yes; that is new.

Now, I think there is a joker in there, if you will permit me, and I think the statement made by the representative of the Secretary of Agriculture yesterday was just a bit weak on that point. He said that they wanted this authority because of the applications to become contract markets made by some little markets that did not trade for future delivery at all. Now, you do not need this authority for that purpose. If you do not need the power, why ask it? If it is not needed in the administration of the bill, why should that have been added to this bill?

Mr. KINCHELOE. Why do you say they do not need it?

Mr. GATES. Because no market applies except such as trade for future delivery.

Mr. KINCHELOE. He said that some of the markets in the Southeastern States did apply.

Mr. GATES. Yes; but they did not trade for future delivery at all, and consequently they did not need it because the bill deals only with markets that deal in grain for future delivery, and consequently such a market would not need the designation of a contract market at all. In other words, this bill is aimed only at exchanges where future trading is conducted. It is not aimed at grain exchanges in general. It does not aim at the control of interstate commerce in grain but simply at the control of those exchanges where future trading is conducted. Now, you do not need any such thing in the designation of a contract market for a market that does not trade for future delivery, do you?

Mr. KINCHELOE. No; that is true.

Mr. JONES. Do not a good many of these small exchanges trade for future delivery?

Mr. GATES. No; there are only seven exchanges in the United States that trade for future delivery—Kansas City, St. Louis, Minneapolis, Duluth, Milwaukee, Toledo, and Chicago.

Mr. JONES. They are the only ones in the country?

Mr. GATES. They are the only ones in the country; yes, sir.

Mr. ASWELL. Is this bill confined exclusively to those seven?

Mr. GATES. Yes; it does not apply to anybody else.

Now, there is also this question involved in that subsection: The question came up, after the passage of the law, when we were discussing with the Department of Agriculture, with regard to its enforcement, as to what the word "official" meant, and the contention of the department was that "official" meant that it must be some governmental weighing and inspection.

Mr. ASWELL. State or Federal.

Mr. GATES. They did not specify which, but it must be a governmental weighing or inspection in order to make it official.

Mr. RIDDICK. It could be a city affair, could it not?

Mr. GATES. The charter of the Chicago Board of Trade gives to the Chicago Board of Trade the right to weigh and gauge, and so on. It also gives the right to inspect. However, that part has been taken over by the State of Illinois, with the exception of the inspection of provisions and flour, which is still the only official inspection in Chicago barring the Federal inspecton of meats.

Through the last 30 years, the Board of Trade of Chicago has conducted a weighing department and has built up a weighing department that commands respect everywhere. It commands respect on the part of the shipper and receiver everywhere. The weights of the Chicago Board of Trade are accepted by the railroads as evidence of what a car contained and claims are paid without question on the basis of those weights, where that is the only thing in question.

We have a pride in that department. We are chartered by the State to do that thing and yet the Department of Agriculture at first did not want to consider that as official weighing. So that the word "official" is material, particularly followed by what has been added, because it would give the Secretary of Agriculture the right to say, "Well, I do not like your weighing and you can not have anything but Federal weighing." If you got into that position and some one wished to add a few hundred retainers to his staff, all he would have to do would be to refuse to acknowledge longer the board of trade weighing and specify that nothing but Federal weighing would meet his approval.

Now, you would have the same thing, and this, I think, is part of the joker, in regard to Federal inspection, instead of Federal supervision of inspection, under the grain grades act. We have Federal supervision now of the State inspection, but this would give an opportunity to substitute Federal inspection for the State inspection and is an invasion of the rights of the State.

Mr. JONES. But the individual would not have the right to require that. It would simply mean that the Secretary of Agriculture could require a change if he thought the thing was not being done fairly. No matter who was doing the official weighing, if the Secretary of Agriculture approved it——

Mr. GATES. If the Secretary of Agriculture approved it, yes; but if he did not want to approve it, if he wanted to build up his own machine, he could do away with the other, could he not?

Mr. JONES. Yes; of course.

Mr. GATES. Now, they have said they do not want to use that power, but they want it put in there. If they do not want to use it, why put it in?

Mr. JONES. Well, it occurs to me that if the Secretary of Agriculture is going to try to regulate these things, he should have the necessary authority, and if the weighing or inspection is not being properly done, he should have the power to require that it be done properly.

Mr. KINCHELOE. What incentive would the Secretary of Agriculture have to take that power away from the State or away from you unless he thought the weighing was not being done correctly?

Mr. GATES. The incentive to build up a political machine, sir. It would give a few hundred additional employees, and more than that, if you made such a change in all the markets.

Mr. KINCHELOE. I think you have got to assume that any public official to whom we delegate authority to administer a law is going to be fair about it. If you do not assume that, we can not have these laws administered at all.

Mr. ASWELL. Could he not be fair and still build up his machine?

Mr. GATES. Sure.

Mr. KINCHELOE. If you gentlemen have been doing this weighing correctly, I do not think it would be fair if he should come in arbitrarily and make such a change simply for the purpose of building up a machine.

Mr. GATES. Let me say that all these things have to be administered by subordinates. The Secretary does not do all these things himself.

Mr. KINCHELOE. That is true.

Mr. GATES. And our experience is that if we get under bureaucratic control in any particular there is always a disposition on the part of the bureaus to put their foot in just a little bit further.

Mr. KINCHELOE. I think you are right about that.

Mr. GATES. And then come to you gentlemen and tell you that it is essential that this be done and they want an additional appropriation so they can extend their activities; is that correct?

Mr. KINCHELOE. Yes; I think that is correct.

Mr. ASWELL. Is not that right and proper for the man in authority?

Mr. GATES. I will not argue that with you, but I bring up the point because I believe there is more involved in this new material than appears on the surface.

Mr. KINCHELOE. Let me ask you this question, Mr. Gates: Suppose that is left out and the Secretary of Agriculture is thoroughly convinced that you gentlemen have ceased to give correct weights, what power would he have in that event?

Mr. GATES. He would have the power to revoke our license as a contract market and that would involve a trial before the three members of the commission, the Attorney General, the Secretary of Commerce, and the Secretary of Agriculture.

Mr. JONES. Underwhat provision of the bill would he have that authority, if you eliminate this language?

Mr. GATES. He can do almost anything. If you leave that the way it was before, it would be exactly the same, so far as that is concerned.

Mr. KINCHELOE. I think they could do away with the market as a contract market.

Mr. CLAGUE. And it is admitted that there has been no complaint. Mr. Morrill admitted that.

Mr. GATES. Yes.

We were given to understand that all that was attempted in this bill was to reenact the old bill under a different power.

Now, this is a serious addition to the bill and I want to call your attention to it.

Mr. TINCHER. You are now talking about paragraph (a)?

Mr. GATES. Section 5, paragraph (a).

Mr. KINCHELOE. Are you addressing yourself now to the first paragraph of the new material or the last?

Mr. GATES. Both parts. The first is coupled with paragraph (f), which is new material also.

Mr. RIDDICK. Your objection to that, as I understand it, is that it gives too much Federal supervision; is that your only objection?

Mr. GATES. It gives too much Federal control, not simply supervision. It gives an opportunity for complete Federal control.

Mr. RIDDICK. On that broad ground, is that your only objection or is there some special danger or menace to your institutions that you fear?

Mr. GATES. I am not convinced that if this were taken advantage of by the Secretary of Agriculture, we would have any better inspection or weighing than we have now. I do not think it would improve conditions.

Mr. KINCHELOE. I do not exactly get your point of view. You say that if this language is put in, it would give absolute authority to the Secretary of Agriculture to take this weighing away from your people and put it under his control.

Mr. GATES. Certainly; all he would have to do would be to say that it was not satisfactory to him.

Mr. KINCHELOE. Then you further contend that even if this language is out of the bill, the Secretary would still have the authoritiy to do that.

Mr. GATES. Oh, no.

Mr. KINCHELOE. You said a while ago that they could revoke your permit as a contract market, subject to appeal to the three secretaries, and therefore I do not see just what your viewpoint is. If the Secretary of Agriculture, if this language remains in the bill, would have the power to take the weighing away

from you and put it absolutely in the hands of the Department of Agriculture, and if the language was not in here, he would still have that power under the general powers granted to him under the bill, why could he not exercise that general power even though this language was stricken out of the bill.

Mr. GATES. In that case, it would revert to the State. It would not revert to the Nation. It would not revert to the Secretary of Agriculture.

Mr. KINCHELOE. In what case.

Mr. GATES. In case he took it away from the board of trade's weighing department, the right to weigh would revert to the State, would it not? The State has delegated to the board of trade, through its charter, the right to weigh.

Mr. KINCHELOE. I do not know whether you get may viewpoint or whether I understand yours.

Mr. GATES. I think I do.

Mr. KINCHELOE. If this new paragraph or this new amendment remains in the bill, of course, the Secretary would have the right and the power to take away the weighing from your people.

Mr. GATES. Yes.

Mr. KINCHELOE. Now, I understood you to say a while ago that even if that language is taken out of the bill, under the general powers granted under the bill, he would have that right anyway, subject to appeal to the three secretaries.

Mr. GATES. I may be wrong about that, Judge——

Mr. KINCHELOE. The point I had in mind was that if he still has that power, what difference would it make whether this langauge was in or out of the bill.

Mr. JONES. I understood him to say that the Secretary would have the right to do away with that market as a contract market.

Mr. GATES. My understanding is that upon complaint and upon giving notice he can take away the designation as a contract market subject to appeal.

Now, may I call your attention to page 6. paragraph (b). The original bill as it passed the Senate did not read as this reads, but this was reinserted by the House conferees and passed to include the following:

"(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations," etc.

This was explained very carefully to the Senate committee and the Senate committee decided that it was fair and the Secretary of Agriculture agreed that it was fair, that the board should decide whether the members should make those reports or the board itself, and to clear that up, I just want to say this: The boards of trade are governed by boards of directors and officers who serve without compensation. They are competitors of other members of the association. The members seriously object to disclosing the details of their own business to their competitors, even though their competitors may at that time be officers of the association.

Mr. KINCHELOE. I remember that point very well when it was discussed by Mr. Griffin when he was on the stand, and I thought he practically conceded that it was cured by the next sentence following, "and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture."

Mr. GATES. Yes; but you have added new material here, on page 7, in line 9, where you have said, "including the persons for whom made." You have included those new words which mean that the names of your customers, which are confidential as between principal and agent, would be disclosed to your competitors who might be officers of the board.

Mr. JONES. Not necessarily so, at all. They would have to keep a record of it, but they would not have to be made known to their competitors. The Secretary of Agriculture could simply see them.

Mr. GATES. If the Secretary of Agriculture is going to require the board itself to report for all the members, how can the board get that information except by getting it from the members?

Mr. JONES. They could get it from the members, but they would not have to furnish information as to any one member.

Mr. KINCHELOE. That is, to any other member of the exchange.

Mr. TINCHER. Mr. Gates, we went over this pretty thoroughly before. I do not know whether you were here or not, but this is the way we figured it out: The board can regulate its own members. There is not any question but what the board could request them to make certain reports, and they would make them do it because they would have to comply with the regulations of the board in order to remain members of the board, and to avoid the proposition

you are talking about, it was conceded that the fairest thing that the Secretary of Agriculture could do would be to let the board require the members to make their reports sealed, ready to be turned over to the Secretary of Agriculture, and, of course, the other members need not know the names; that is, the board would not need to go into that matter itself. The proposition involved there is that the regulation is not worth anything unless they do know who is making these trades. There are men who trade on the Chicago Exchange that are so situated that they can buy and sell as much wheat in the course of a day as they want to, without any expense at all. They can make their deals themselves in buying and selling.

Mr. GATES. Mr. Tincher, there was no objection originally to the Government having all the details on those transactions but——

Mr. TINCHER (interposing). The only thing contemplated by this change is to give the Secretary of Agriculture in these reports the name of the man who is making the deal instead of leaving that part of it blank. We went over that matter pretty carefully, and I think Mr. Griffin finally agreed that if the board requested these reports, the board could furnish the reports to the Secretary of Agriculture without examining them, because they would be sealed up.

Mr. GATES. If you are going to provide for it in that way, then you ought to put it in here that the board is to be simply a forwarding agency.

Mr. TINCHER. That is left to the board itself in the bill as it is now. The board can handle that itself, and if it does want to examine the members' reports it can do it, and if it does not want to examine them they can have them furnished sealed up and simply forward them to the Secretary.

Mr. GATES. But the Secretary of Agriculture has the right to prescribe the form. He might say that it was the duty of the board itself to summarize these reports and get them in certain form for forwarding to the Department of Agriculture, because that would save the Department of Agiculture some work.

Mr. TINCHER. That is not the only point. It is not simply to save the Secretary of Agriculture work, but the board can always get what it wants from one of its own members without any particular trouble.

Mr. GATES. But there was not any complaint about that originally, was there?

Mr. TINCHER. No; the only thing that has been added to the bill are the words "including the persons for whom made," and I think that is material, if the Secretary takes a notion he wants it.

Mr. GATES. There is no objection to his having it, but there is objection to it if you have it in such language so that the board must furnish the information in whatever form the Secretary of Agriculture may prescribe, which might make it necessary for the board officials to know the details of those transactions.

Mr. JONES. I think the original bill provided for that. The original bill contained the language, "showing the parties to all such transactions." If you do that, that would include the names of the individuals who took part in the transaction.

Mr. GATES. No, sir.

Mr. JONES. I do not see how the adding of this clause makes it any stronger than the original bill, because under the original bill they were required to make reports showing the parties to all such transactions.

Mr. GATES. All right. Let me say this: That the parties to a contract on the board of trade must be members of the board. The parties to one of these contracts, we will say, are Hulburd, Warren & Chandler, and Lamson Bros. & Co. Now, that does not disclose the origin of that order, does it?

Mr. JONES. Not necessarily.

Mr. GATES. So that does add materially to it and makes it more objectionable that the detailed information should fall into the hands of competitors.

Mr. JONES. Well, let us go a little bit further. If the two men you mentioned made a transaction for another party, would not the report to the Secretary, under that provision, show all the parties to the transaction? Would he also require, under that, a disclosure of for whom the transaction was made? If you make it for another party, would not that party really be a party to the transaction?

Mr. GATES. Yes; he is the principal; the other is his agent. The name of the agent is given in the transaction. They take the board of trade parties to the contract.

I think the Secretary ought to have that. I think that if he is going to have any report at all he ought to have the names of the persons for whom the

transaction is made, but I doubt seriously the wisdom of having that done through the board. All the Secretary wants is to get the reports. He has told us so, and he agreed to a change in the feature of the bill, so that the members might furnish the reports, but it would be obligatory on the board to require its members to furnish the reports just the same. All the Secretary cares about is to get the report. But we object to having the details of our business transactions disclosed to our competitors, who are officers of the board.

Mr. JONES. I can see your distinction all right.

Mr. GERNERD. Let me ask you this, Mr. Gates: Is it possible for the Secretary to obtain the desired information in the manner you have indicated?

Mr. GATES. Not now; no. This bill would require the boards to pass a rule giving the officers of the board that power.

Mr. GERNERD. All right. Following that up, would it not follow that if the bill does not give him that authority and he is after certain definite information which would disclose a violation of the law, he could not obtain it?

Mr. GATES. No; because before you could become a contract market you would have to have a rule passed which would require members to submit a report to the Secretary of Agriculture direct whenever the Secretary called for such a report.

Mr. KINCHELOE. Your idea is that the member of the board ought to send it in to the Secretary of Agriculture, instead of the board of trade?

Mr. GATES. Exactly; and that it ought not to be placed in such a position that the board members would have either the opportunity or the obligation to become familiar with the details of those transactions.

Mr. GERNERD. Has the Secretary's viewpoint on that controversial point been obtained?

Mr. GATES. It was before, yes; and he was entirely satisfied if he got the report. He did not care whether the board made it or the members. The bill as it passed the Senate read that the report should be made by the board or any member thereof, as the governing board should elect. That is, each board of trade should determine whether the members were to send it direct or whether the members should have it sent to the secretary of the board and he forward it.

Mr. JONES. The original bill provided, "made by the board or any member thereof, as the Secretary of Agriculture may direct."

Mr. GATES. That is the law. I am talking about the bill as it passed the Senate. It was changed back in conference.

Mr. KINCHELOE. That was the Senate provision you were talking about. They knocked out the substitute in conference?

Mr. GATES. Yes. Even though the Secretary had expressed his entire approval of the provision, the governing board of the exchange might elect which way it would send the report.

Mr. KINCHELOE. What do you think of this section as it is with those words eliminated "including the persons for whom made"?

Mr. GATES. I think there ought to be no question about the Secretary having the right to that information, but it makes it doubly objectionable to have such information pass through the board.

Mr. KINCHELOE. I remember that we went into that very thoroughly before, and I do not think there is any disposition on the part of the committee to compel competitors on the board to reveal to each other their transactions. The object was only to give the Secretary power to get the information.

Mr. JONES. According to your construction, then, if we change the third line of subsection (b), striking out "as the Secretary of Agriculture may direct" and inserting "as the board may determine," it would meet your approval?

Mr. GATES. If it were as it first passed in the Senate before it reached the conference, which was agreed upon by the Secretary of Agriculture, then there might be included the words "including the persons for whom made."

Mr. WELLS. I might say on this point that after the passage of the future trading act, the grain exchanges met with the Secretary of Agriculture and his solicitor and agreed upon rules which would be passed by the exchanges as fulfilling the requirements for a contract market, and the rule with reference to reports provided for the submission of reports by the members and not by the boards themselves. That was entirely acceptable to the Secretary, and that was what we had been working under up until May 15.

The CHAIRMAN. How many members are there of these boards?

Mr. GATES. We have 1,600 members in our board.

The CHAIRMAN. In the seven exchanges, how many would there be altogether? Can you approximate it?

Mr. GATES. Oh, probably as many more in the other six.

Mr. KINCHELOE. In each of them?

Mr. GATES. No; not in each—the total.

The CHAIRMAN. So if the reports should be made by the members, the Secretary would probably have 10,000 reports to consider, would he not?

Mr. GATES. Yes; but the documents would be the same, if Congressman Tincher's idea should prevail that the board would simply be a forwarding agency—they would be sent in under seal.

The CHAIRMAN. My thought is this, that that expense should be borne by the exchanges instead of by the department.

Mr. GATES. Well, it is the department that wants the information, is it not?

The CHAIRMAN. But they should have it in such a form that it would not require a large number of people to compile the reports.

Mr. GATES. It is supposed to be in the national interest, and you should not impose that heavy expense on the individual. It amounts to a tax.

Mr. TINCHER. Mr. Gates, here is the issue, as I understand it. If a member of the Chicago Exchange does not make the reports required by your regulations, which you must have to be designated as a market place, the Secretary of Agriculture should not be required to deal with that man; he should have the power to deal with the board.

Mr. GATES. All he would have to do would be to notify us to inflict the discipline provided for by the rule, and if we did not do it, then he could take away the designation.

Mr. TINCHER. I do not think there will be much disagreement about that, because you say you have no objection to the words "including the persons to whom made."

Mr. GATES. I said we would not object to that if the other were changed.

Mr. TINCHER. I see. Well, I do not think there will be much quarrel over that proposition.

The CHAIRMAN. Do you now suggest that it should be left to the discretion of the board instead of the Secretary?

Mr. GATES. Left to the discretion of the board as to whether the reports are to be forwarded to the Secretary by the individual members or by the board.

The CHAIRMAN. And the form in which they shall be presented?

Mr. GATES. Well, the Secretary would prescribe the form.

The CHAIRMAN. You suggested a change. What is your suggestion?

Mr. GATES. I suggested that it be changed so that it would read as it did when it passed the Senate before the conference.

The CHAIRMAN. That leaves it to the exchanges instead of to the Secretary?

Mr. GATES. Exactly.

The CHAIRMAN. Well, then, why do you not leave the whole regulation to the exchanges instead of to the Secretary?

Mr. GATES. I would do that myself, Mr. Chairman [laughter], but that would not be in line with the idea of the people that framed this bill.

The CHAIRMAN. I think we all agree that the bill as amended in the Senate would have been perfectly harmless.

Mr. GATES. I can not agree with you there, either.

The CHAIRMAN. We think we ought to leave it to some representative of the Government. If the reports and everything are to be left to the exchanges, of course that would be perfectly satisfactory to the exchanges.

Mr. GATES. This does not do anything except to remove one burden from the exchange—one cause of dissatisfaction with the law.

Mr. JONES. I understand that you are willing to give him the information that is provided for; you just simply want a different method of giving that identical information?

Mr. GATES. We are willing to give it to the Secretary.

Mr. KINCHELOE. And you want the members to do it?

Mr. GATES. Yes.

Mr. JONES. You want the Secretary to have the information, but you would prefer, instead of giving it to the Secretary through the board, to have it given by the individual member?

Mr. GATES. Yes; and I can not make that as clear to you or as forcible as it would appear to you if you were a member of one of these exchanges and knew the feeling in regard to that disclosure of information to the officers of the board. Now, we were compelled to do that under the Food Administration, as

a war measure, and there was not a time when there was a request for a report that there was not a serious protest from the trade in regard to it.

Mr. TINCHER. The whole object of the bill has been that the Secretary might have this information. It was not with a view of disturbing the exchange.

Mr. GATES. No.

Mr. TINCHER. Now, you have said, and I think correctly, that the information should include the names of the persons for whom the deal was made. But I can not attach so much importance to the question whether the members or the officers of the exchange are permitted to examine that or have an opportunity to examine it, or whether they forward it on without examining it. I have always contemplated that if a member of the exchange submitted to the officers a report required by the Secretary of Agriculture there would not be such a thing as taking that report and examining it. However, if you wanted to say "sealed," as I told Mr. Griffith, I do not see any particular objection.

Mr. GATES. But here—the Secretary has the power also to prescribe the form. He might tell the board, if he were asking for a report from the board, to give a summary of the whole thing. For illustration, here is a man who is, we will say, trying to manipulate and is dealing through a member's house. The board would be required to accumulate that information, showing the net amount that each individual trader was net long or short. Do you see what I mean? It would be necessary in that event for the officers of the board to know the details of all those transactions, would it not? Otherwise they could not make such a report. That is what I object to.

Mr. TINCHER. Well, so long as there is a law like that, giving the Secretary that authority, I have always contended that there would not be any manipulation, because a board can put the fear of God into the fellows that are manipulating, and if there is a heavy enough weight hanging over their heads there will not be any manipulation.

Mr. GATES. Well, that is aside from this question. This is the question of getting the reports——

Mr. TINCHER. To prevent manipulation.

Mr. GATES. For whatever purpose they desire to use them for.

Mr. TINCHER. You suggested a while ago that this bill does not prescribe a penalty, that it does not provide a punishment for manipulating the market. You are entirely right about that, because we have a law now that does that. The object of this bill was not to punish some man that manipulated the market, but to prevent manipulation.

Mr. GATES. Yes; but even though you assume it will prevent it, you have no penalty for it.

Mr. TINCHER. Well, we have a Federal law that provides a penalty for it, and that law does not prevent it.

Mr. JONES. But the Secretary could check the manipulation by the power he would have to deprive the board of the right to operate?

Mr. GATES. Certainly.

Mr. JONES. The Secretary is given that authority under another provision of the bill, if they do not comply with the rules.

Mr. GATES. But they can not punish the board for the manipulation of an individual. Furthermore, the rules in regard to manipulation would have to be passed by the board.

Mr. TINCHER. We spent quite a lot of time on that before, Mr. Gates, and I am sure every member of the committee has gone into it in considerable detail. Suppose you proceed to your next suggestion.

Mr. GATES. Page 7, line 18, and following. I wish to call the attention of the members of the committee to certain phases of that. Possibly I had better read it. [Reading:]

"When the governing board thereof provides for the prevention of dissemination through the mails or in interstate commerce or by telegraph, telephone, wireless, or other means of communication, by the board or any member thereof, of false, misleading, or inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of grain in interstate commerce."

That is new material.

Mr. TINCHER. Oh, no.

Mr. GATES. Yes; you did not say anything about the mails.

Mr. KINCHELOE. Yes; beginning with "provides" it is new.

Mr. GATES. Beginning with "provides" and down to "communication."

Mr. TINCHER. The reason I said it was not new is this: I have never understood that the exchanges objected to having rules and regulations of their own to prevent the sending out in any form of false market reports.

Mr. GATES. I think you are right in your understanding. I read this with the idea of explaining a little about it.

Anyone but a member of a board of trade may do that thing. It would not prevent a Dow-Jones report, for instance, that might be misleading or false. Furthermore, it goes so far as to prevent any member of the board from sending out a Government crop report. Why? Because——

Mr. TINCHER (interposing). Do you make that statement on the assumption that they are inaccurate?

Mr. GATES. I do not have to prove that the Government crop reports are inaccurate because they are admitted to be so by the department itself. Last December, after a year had elapsed since they made their supposedly final report on the crop of 1920, they came out with a correction showing there were millions and millions of bushels more wheat than they had given as their final estimate of the crop. That was an inaccurate report. They admitted it was inaccurate and corrected it a year later.

Mr. TINCHER. I think the Department of Agriculture should be complimented, because I believe that is the first time that the Department of Agriculture ever had an inaccurate report that favored the producer.

Mr. GATES. But that is aside from this question, which involves the matter of sending out inaccurate reports.

Now, a crop estimate is necessarily inaccurate to a certain extent; it is in its nature to be so. The Government report is no exception. You can not have an accurate crop report; it is impossible. But you make it a criminal offense for a man to send out any inaccurate report.

Mr. CLARKE. That is limited to board members, is it not?

Mr. GATES. Yes; anybody else can send them out.

Mr. TINCHER. Does it make it a criminal offense for them to send them out?

Mr. GATES. Yes; you will find that in section 9.

Mr. CLARKE. Why limit it to members of the board?

Mr. GATES. I simply call attention to that, because I thought possibly you might not wish to have it appear just that way.

Now we come to page 8——

Mr. VOIGT (interposing). Just wait a minute there. Is it not a criminal offense on the part of the board for a member to send out any misleading information?

Mr. GATES. "By the board or any member thereof."

Mr. VOIGT. All that the board has to do under this subsection is to adopt a proper rule for the guidance of its members. When the board has done that the board has performed its duty and can not be liable to any criminal prosecution.

Mr. GATES. All right; but you come to section 9 and you find that the penalty is for "carelessly" sending out an inaccurate report. Then you refer to the definition in the first part of the bill, and it says that the act of any employee within the scope of his employment is the act of the member of the board. If a stenographer makes a mistake in copying a Government report——

Mr. VOIGT. You do not get my point. All that is required by this subsection is that the board shall adopt a proper rule to prevent its members from sending out false and inaccurate information. When the board has made that rule for the guidance of its members the board has performed its duty, and I do not see how it can then be liable to any criminal prosecution.

Mr. GATES. All right. I am speaking as a member of the board. I am not protected. Suppose the board is protected; I am not. I am a member.

Mr. VOIGT. You mean an individual member?

Mr. GATES. I am an individual member—a member of a firm that is in the commission business.

Mr. VOIGT. Let me ask you just one more question. Suppose that as a member of a board of trade you send out a circular letter giving information furnished by the Department of Agriculture, and that information subsequently turns out to be inaccurate: Do you have any idea that any court or any jury would find you guilty of sending out inaccurate information?

Mr. GATES. I do believe they would; I would put up a dickens of a fight on it. But I am showing you how far you are going on that thing.

Mr. GERNERD. Do you mean to say that we should be silent on that subject?

Mr. GATES. I do not say that. But if you are going to speak at all, the language of the old bill is sufficient, without excluding this stuff from the mail. I have never heard of excluding material of this kind from the mails. You are not making a general law to exclude such material from the mails, but only as relates to board of trade members. You restrict board members in using the mails, but nobody else. Anybody else can send out as much misleading information as he desires.

Mr. TINCHER. How much attention has been paid to some individual's information? I remember just before this law came into effect there was an instance where there was a telegram sent out from a member of the exchange in Chicago as to the number of cars of wheat in Galveston, and that had a very disastrous effect upon some markets. No individual could have got anywhere with that information. You know there have been instances—of course, you will recall hundreds of them where I can recall one—where this evil of sending out false reports has had great effect.

Mr. GATES. We are not questioning that; and as Mr. Morrill told you yesterday that he had had full cooperation from the exchanges in regard to the matter of minimizing false or fictitious or inaccurate reports. But I am calling attention to the fact that in this you exclude from the mails material that is put in by members of the board——

Mr. CLARKE. Why not make it general in its application?

Mr. GATES (continuing). And do not apply it to other people. You go so far even as to make it "inaccurate," which includes Government reports.

Mr. TINCHER. Oh, well, I do not believe you are afraid or that anybody else would be afraid.

Mr. GATES. Well, I call your attention to it. I am not writing the bill at all.

Mr. TINCHER. Personally, I will say this to you: That I can not fully see the merit of barring anything from the mails. The reports that go out in the mails are not the reports that raise Cain in the markets.

Mr. GATES. Why, some of the most disastrous things we have ever had on the Chicago Board of Trade have been due to stuff that has been sent through the mails anonymously.

Page 8, paragraph (e). That is the one relating to the admission of cooperative societies. I wish to call the attention of the committee to this, that it is not the local cooperative society that the boards of trade have reference to in making this objection. The members of this committee have referred to local cooperative societies. That is not it. The objection on the part of the boards of trade have been to a national organization that does business on the basis of a monopolistic contract and seeks entrance to the exchange on a preferential basis.

Now, in line with our promise to you when we were here before, and in line with a suggestion that was made in November at a conference called by the Secretary of Agriculture, there was a committee appointed—three members representing farm organizations and three members representing the exchanges. The farm organization members were: Clifford Thorne, for the American Farm Bureau; Mr. Shorthill, secretary of the National Farmers' Elevator Companies—that is, the small farmers' elevator companies all over the country—and Mr. Mell, who is the personal representative of Mr. Gustafson, president of the United States Grain Growers' Association. Then there were three representatives of the exchanges to represent that side——

Mr. PURNELL. Who were the representatives of the exchanges—since you have put the other names in?

Mr. GATES. Mr. Frederick B. Wells; Charles W. Lonsdale, of Kansas City, Mo.; and myself.

The idea was—and it was widely advertised—that that committee would receive any complaint in regard to the marketing of grain through the exchanges. That committee has, since it was formed, placed before the exchanges, and all the exchanges that trade for future delivery in the country have adopted, a rule suggested by that joint committee. That committee was formed for the purpose of threshing out any questions of difference and trying to bring the producer and the marketing machinery together on the basis of mutual help.

Now, if you will pardon me for saying so, I believe that so far as that phase of the situation is concerned, that committee, not because of its present make-up—it will be a continuous thing, and holds four stated meetings each year, with special meetings called from time to time—that committee will go further in the next five years in adjusting differences between producers and

the marketing machinery than any legislation that you can possibly pass. And I say that not without compliment to this committee, not questioning at all the general intelligence of this committee, but because when we get half a dozen men who are thoroughly familiar with a subject to be discussed and who know what they want, with their feet under the same table, in frank discussion of a thing that there is some difference of opinion about and arrive at a conclusion, you have got something that will work instead of something that is purely theoretical.

Now, then, one question that was brought up and which has been discussed by all of the exchanges is the question of trading by farmers' elevators. It was found, for instance, that a good many farmers' elevators had lost a lot of money in the last two years because they had not been using the hedging market; they had been speculating on the cash grain. That is true of scores and scores of elevators throughout the West. There was a feeling on the part of a good many of the farmers' people that they did not dare trust their managers to trade for fear they would get to trading on the company money. There had been several instances where managers had traded with the company money.

So the rule was suggested to the exchanges that no nonmember corporation should be permitted to trade through any member of an exchange until there had been filed with the member who was to execute the trade a resolution by the corporation itself designating the people who were authorized to give orders, and also providing that duplicate copies of the confirmation should be sent to some officer, whose name was mentioned, other than the man giving the orders. That would give the country elevators a chance to check up all the time through some other officer on what the manager was doing, and would make them feel safe in doing their hedging and so protecting themselves in their regular transactions. At the same time the board member was protected because of having the authority from the corporation itself, by a resolution of the board of directors or a resolution of the stockholders.

I simply cite that as an instance of what has been worked out. Other matters are up for consideration. The matter of the terms under which cooperative societies might be admitted to boards of trade is the next subject for discussion, and a special meeting has been called for late this month by the acting chairman, Mr. Mell. I mention that because I believe—and I think Mr. Morrill gave you to believe yesterday—that he had some grave doubts as to whether subsection (e) has any place in this bill at all.

Mr. KINCHELOE. Have any of the farmers' organizations become members of the board since the enactment of this original law?

Mr. GATES. I do not know that any have yet become members. I do not know that any have yet applied for admission.

Mr. JONES. The reason for which they have been excluded heretofore is the fact that they have reapportioned some of their commissions?

Mr. GATES. Rebated commissions, as we call it. They call it "patronage profit."

Mr. JONES. That is practically the only thing that excluded these cooperative associations from membership?

Mr. GATES. Absolutely.

Mr. JONES. So the only part of this that you object to is the proviso that no rule of a contract market against rebating commissions shall apply to the distribution of excess earnings among the bona fide members of any such cooperative association?

Mr. GATES. Yes; that proviso is the thing that the exchanges have always objected to ever since this legislation was proposed—any preferential treatment by which they might solicit business on a different basis from other members of the board.

Mr. KINCHELOE. You say that there have been, to your knowledge, no applications from these organizations to become members of the board?

Mr. GATES. Not so far as I know. Have you had any in your market, Mr. Wells?

Mr. WELLS. No.

Mr. KINCHELOE. I got the impression at the last hearing that there was a great demand from these organizations for membership on these boards.

Mr. JONES. As I understand it, your rules prohibit the rebating of these commissions. I suppose the reason they do not apply is because your rules forbid that.

Mr. GATES. They can tell better about that than I. I do not know their reasons.

Mr. JONES. They knew your rules would not let them in.

Mr. RIDDICK. About a year ago were there not requests from some of these organizations to join your board?

Mr. GATES. No, sir. That was widely advertised, but there never was any application made. As a matter of fact, as I understand it, they have not developed their marketing machinery sufficient to go in.

Mr. KINCHELOE. The point I was making is that that same proviso is in the original act. Now, since this proviso was in the original act have there been any applications from these farm organizations to become members—since the enactment of the original act?

Mr. GATES. No.

Mr. TINCHER. You know the Missouri law on that subject is still before the courts.

Mr. JONES. Yes; the law is still in the air on that.

Mr. GATES. There is a Missouri law on this same thing which has been questioned in the United States district court in Missouri and is now before the circuit court. The district court, as I understand it, has granted an injunction against the enforcement of the act, and the case is now before the circuit court in Missouri.

Mr. KINCHELOE. Is that the court of appeals out there?

Mr. GATES. The circuit court of appeals; yes.

Mr. KINCHELOE. That is the highest tribunal of the State?

Mr. TINCHER. It is not a state court; it is the Circuit Court Appeals of the United States.

Mr. GATES. An injunction was granted by the district court by three Federal judges.

Mr. CLAGUE. Do you have any cooperative societies belonging to your Chicago board?

Mr. GATES. Why, yes; what we have always called cooperative societies. There is now a disposition not to call them cooperative societies, but they are individual farmers' elevator companies.

Mr. KINCHELOE. Do they distribute their profits back to the memebrs?

Mr. GATES. Well, they have not had that idea until recently in the territory that Chicago serves. One of the concerns that is a member of the board is the Canadian Grain Growers' Export Co. That is one of their companies to handle the cooperative marketing in Canada, as I understand it.

Mr. JONES. I have no doubt that if this law were enacted and all the legal objections cleared away, these cooperative associations would apply for membership.

Mr. GATES. They did not apply after the former bill was passed.

Mr. VOIGT. Is there any cooperative organization or a member of an organization which is a member of your board which distributes back profits to the members of the cooperative associations?

Mr. GATES. Not so far as I know, Congressman Voigt.

Mr. VOIGT. They have applied for membership?

Mr. GATES. I think not; no.

Mr. VOIGT. You have had no application whatever in the past from any organization or a member of any organization which distributes back profits?

Mr. GATES. No, sir; never, so far as I know, in Chicago. Am I right, Secretary Mauff?

Mr. MAUFF. Absolutely.

Mr. TINCHER. What does your membership sell for?

Mr. GATES. I think it is around $6,500.

Mr. MAUFF. The last sale was $6,000.

Mr. VOIGT. And up to this time this has only been a theoretical question in your exchange?

Mr. GATES. Yes.

Mr. VOIGT. Has your board or any member of it at any time discouraged any such cooperative association or a member of such association from making application to become a member of your exchange?

Mr. GATES. Not unless our statements before this committee and the Senate committee could be considered as discouraging their applications.

Mr. VOIGT. Has there been any individual case where you have discouraged anyone from making application?

Mr. GATES. Of course, I have not full information, but so far as I know there has been no such discouragement—that is, in any individual case. I know of no individual case.

Mr. KINCHELOE. Of course, Mr. Voigt, you mean since this original act?

Mr. VOIGT. I mean at any time in the past.

Mr. KINCHELOE. The rules absolutely forbade their becoming members of it.

Mr. JONES. It seems to me that that is the most persuasive sort of discouragement.

Mr. KINCHELOE. I would take it, of course, that there would be no applications when they knew the rule forbade it. That was the reason I was asking whether there had been any applications since the enactment of the original act. He says not.

Mr. CLAGUE. I do not think there would be as many at Chicago as there would be at Minneapolis, for instance.

Mr. TINCHER. This matter has been in the courts, and naturally nobody would want to pay $6,000 for a membership with the prospect of getting into a controversy.

Mr. KINCHELOE. When was that action originally filed?

Mr. TINCHER. It was filed simultaneously at the time the act was put into effect.

Mr. KINCHELOE. It was approved August 24, 1921.

Mr. TINCHER. Well, they filed it before December 24. The act was not to take effect for four months.

What do you say, Mr. Gates, about subsection (f)?

Mr. GATES. Subsection (f) is all new material.

I do not know from a reading of this whether it is your intention to delegate to the Secretary of Agriculture the power which resides only with Congress to interfere with the completion of contracts or what your wish is in that respect, but in this language you give to the secretary the right to change the terms and conditions and forms of contracts. Mr. Morrill expressed that yesterday by saying it would give them the right to determine what should be the contract grades deliverable, and at what discounts or premiums other grades could be applied, and also to control the matter of public storage in these markets.

Now, I do not see any reason why, in a bill that is supposed to be simply a reenactment, under the commerce clause, of the old bill, you should introduce any such radically new material as this. That is a thing that would take away from contracting parties the right to agree among themselves as to the terms under which they will contract. Members of the board could not arrange among themselves as to what grades should be deliverable on a contract. The Secretary would have the right to say what grade might be delivered, and if he were going to use this power at all he could not use it until the month of delivery came around, and then he would specify what the grades should be and what the conditions should be. He would probably have to change it during the month of delivery.

The situation in grain is very different from the situation in cotton. In grain the grain standards act has divided the grains into so many different grades, so many subgrades, that in order to provide a wide market you have to provide a good many different kinds of grades, which are Federal grades, for the fulfillment of contracts, in order to give the man who has hedged a chance to deliver the kind of stuff he has. By this, as I understand it, you would give the Secretary of Agriculture—not before the contract is made but at the time for the fulfillment of the contract—the right to change the conditions of the contract.

Mr. KINCHELOE. Give him retroactive power?

Mr. GATES. Absolutely so. I am just a layman, but it seems to me it gives him the right—and I think that was the statement Mr. Morrill made yesterday—to change the conditions of the contract as they were entered into and change them when the time of delivery comes.

Mr. TINCHER. Well, I do not so understand it. That is clearly not within the language of section (f). The only thing it has to do with is when you apply for designation as a market. Then section (f) says you must have a rule adopted by a Government board, which provides for making such changes from time to time in the terms of the provisions of the forms of contracts of sale to be executed on or subject to the rules of such board as may be necessary to remove or overcome any material prejudice or disadvantage to sellers or buyers thereof found by the Secretary of Agriculture after investigation and public hearing and communicated by him to such board.

He investigates, and he finds that the form of contract which you are using is working a prejudice and a disadvantage to sellers and buyers, and that is communicated to such board. Then your rule must reserve the right to change

the form of that contract. To say that that gives the Secretary of Agriculture the retroactive right to go back and change some contract that has been made——

Mr. GATES. You heard what Mr. Morrill said yesterday?

Mr. TINCHER. Yes; I heard that.

Mr. GATES. How could it be effective at all unless it were to be applied during the month of delivery? Because commercial conditions could not be known in advance. He proposes to effct it on the basis of commercial conditions at that time.

Mr. TINCHER. But here is what it says: After a hearing, a public hearing, he finds that you are using a form of contract that is unfair or that works a prejudice and disadvantage. Then you have got to have in your application for designation as a marketing place a provision that you will require a change. Who fixes the forms of your contracts now? Do you not have a uniform form?

Mr. GATES. The contract form is determined by the board.

Mr. TINCHER. But the rules of the board provide the form of contract, do they not?

Mr. GATES. Yes, sir.

Mr. TINCHER. You are working under a form of contract now fixed by the rules of the board?

Mr. GATES. Yes, sir; and they are known to everybody that makes a contract at the time he makes his contract.

Mr. TINCHER. Well, I do not care to argue it; but I declare I do not see where you find anything in that provision that permits anybody to go back and change a contract existing between two men.

Mr. GATES. It takes away our right to pass our own rules and agree upon what the terms of our contracts shall be.

Mr. KINCHELOE. Mr. Gates, do you not think that if the Secretary of Agriculture, after a hearing, becomes acquainted with all the facts that enter into a contract, and after a hearing is of the opinion that it renders the contract hazardous and unreliable, so far as it affects the hedge, he ought to have some power to change it?

Mr. GATES. I have not so much confidence in the outcome of that as some of those who drew this bill. There may be a hearing required, but they do not always abide by the facts brought out at the hearing. They cause an investigation to be made, but they do not necessarily abide by the views of the people who make the investigation. They go to some extent on their preconceived notion or they try to get the evidence to back up the notion they have already arrived at as to what should be done.

Mr. KINCHELOE. That goes back to the fundamental proposition that I intimated this morning. If you are going to delegate the administration of an act to some official, you have got to assume that the official is going to be fair, and if you do not assume that, why, you can not administer any law of Congress that designates a certain official to administer it.

Mr. TINCHER. Suppose, Mr. Gates, it should go out to the country this morning, to the men in the grain business that know you and have confidence in you, that you had said before this committee that if we pass this bill it would give the Secretary of Agriculture power to disturb a contract existing between two men. That would have weight; that would create a prejudice against this bill. Nothing like that is in the bill or can be read into it in any shape or form.

Mr. GATES. I am just a layman, but I think that this whole bill will require years of litigation to determine just what it does mean, because of those facts. Mr. Morrill stated what he thinks that section means, and I am going by what he says. I infer from what he says that since they have the right to establish our grades, to say what grades shall be deliverable on contracts and at what discounts or premiums, that part of that work can not be done previous to the time the contract is made. Therefore the terms of the contract must be changed.

Mr. TINCHER. You are using a form of contract that is prescribed by the board. All the dealers are using the same form of contract. It is not a private contract between two individuals; it is on a form. Now, the Secretary of Agriculture has a hearing, and he concludes that in that form of contract there are things which work material prejudice or disadvantage to sellers or buyers and which substantially affect the prices of such contracts so as to render them hazardous or unreliable. He would say to the board of trade, "We want the form of this contract changed." That would be an altogether different thing. He merely tells you to change your form of contract.

Mr. JONES. There is not any question that that would apply to existing contracts. It says, "contracts of sale to be executed." It would apply to contracts that arose after the change was made, but it would not apply to existing contracts.

Mr. GATES. I know what you mean, and I have a pretty clear idea of what I mean. We do not mean the same thing. I do not mean that if this law were to go into effect to-day it would affect the contracts that are now open, but it provides that the Secretary must determine during the month of delivery what the discounts and premiums shall be at which that grain must be delivered. That must become a part of your contract. That can not be administered until the time of delivery, can it? So there is nothing certain about that form of contract; that is, what the basis of delivery is to be and what the discounts and penalties are to be. We know the grades, the grades would have to be determined before the contract was made, but the penalties or discounts or premiums at which that grain could be delivered would be left to the Secretary.

Mr. JONES. This is a very technical discussion. I think you have exaggerated the importance of that feature of it. As I read it I think the reasonable construction of it is that if the Secretary finds there is some provision of the contract that is hazardous or unfair he would take it up with you, and you would have hearings, and he would say, "Hereafter in your contracts you ought to make some change," and then, after due notice, you would change the form of any future contracts.

Mr. GERNERD. I do not see where there would be any material difference whether your board should make that change or the change be suggested by the Secretary and made by your board.

Mr. GATES. In the final analysis the Secretary can not designate commercial discounts and premiums until the maturity of the contract. You can not know in advance the basis of your contract.

Mr. KINCHELOE. Would not that be determined by your grading?

Mr. GATES. No; it would depend entirely upon the commercial conditions at that particular time.

Mr. KINCHELOE. Well, you would have just as good a situation with the changed contract as you would with the existing contract, because both would be executed before the transaction. In other words, as Mr. Jones says, I do not think the Secretary of Agriculture has any retroactive power here; that is, he has not any right to change the form of an existing contract.

Mr. GATES. Oh, no; I think you are right about that. He can not change the conditions of a contract that is now made. This would require the board to adopt a rule that the Secretary might come in during the month of delivery and prescribe discounts or premiums.

Mr. TINCHER. This contract business is a little different from the ordinary contract that you and I might sit down and make, because the transactions on your exchange are made on a prescribed form of contract, prescribed by the exchange, which your members agree to use, under which they assume certain obligations, and the parties that trade with them assume certain agreements to arbitrate—I remember that paragraph very well, because I have had some experience with it myself. But this section here has reference to the form of the contract that the exchange is going to use, and I really think—due perhaps to the fact that you did not have time to go into it as thoroughly as you might, and especially enlightened by your first offhand version of the meaning of this paragraph—that perhaps too much importance is being attached to it.

Mr. GATES. It is all new material, and there is no room for it in a bill that seeks simply to reenact, under a different power, the provisions of the former law.

Mr. TINCHER. The occasion for it is this: That in the hearings and meetings with the exchanges the department arrived at the conclusion that there would be a possibility of an evasion and thwarting of the other law by the form of contract used, and there could be no legitimate objection to the exchange agreeing to a form of contract to be used.

Mr. GATES. It is true, of course, that we have had a very short time in which to study this bill. Nobody had a copy of it before last Saturday, so far as I know. But if there are to be any further hearings on this thing, we want to have a chance to study it further. At first blush we are seriously opposed to the new material in this bill.

Mr. KINCHELOE. As a lawyer, I do not exactly get your viewpoint. If I understand this section, it means this: In my country we have fall wheat. *We begin to* market that along in July. Now, suppose that along in March.

or now, this law is in effect, and the Secretary comes to the board of trade and looks at your form of contract for the fall wheat. He says, "Well, gentlemen, here are some things that I do not think ought to be in your form of contract." You say, "Mr. Secretary, we differ with you, and we think we can show you." He says, "All right; we will have a hearing on this." He conducts a hearing, at which you and all the experts are present, and he is still of the opinion that that contract ought to be changed. Of course, his will prevails after the hearing, and he changes that. Now, contracts are to be made for fall wheat, which will not be harvested and put on the market until about August. He comes to the conclusion that that contract is in such form that it is hazardous, and he believes that it is going to impair legitimate hedging, and he makes that change long before this wheat goes on the market. I do not see where you fellows are injured.

Mr. CLARKE. Why shouldn't he have the right, then, to keep you from selling your farm because you are selling it too cheap?

Mr. KINCHELOE. Oh, I do not think that is a parallel case. Then you speak of the uncertainty. Why should there be any more uncertainty in the amended form when the wheat comes to the market than in the form you already have?

Mr. GATES. The form we already have prescribes the discounts and premiums at which the off grades or better grades may be applied on that contract. Under this provision those things would not be known until the time for delivery came, and then the differences would be prescribed by the Secretary.

Mr. KINCHELOE. Why would they be unknown until the time of delivery came any more than under your present contracts?

Mr. GATES. Our contract specifies definitely at what discounts the off grades can be applied—so many cents off.

Mr. KINCHELOE. Is it not fair to assume that he would clarify that as much as he could?

Mr. GATES. Well, he could not do it if he is going to do it, as he said, on the basis of commercial conditions at the time the contract matures until the contract does mature. He would be fixing it from day to day during the delivery months.

Mr. KINCHELOE. I do not think he would be changing your form of contract every day or so.

Mr. GATES. Well, I am going by what Mr. Morrill said.

I just want to say one thing more about section 9. That penalty clause contains nothing in regard to the worst phase of the offense as prescribed by the legislation, but does prescribe penalties and makes it a criminal offense for a man, knowingly or carelessly, even though it be done by a clerk in his office, to send out any false, misleading, or inaccurate reports. I say the word "inaccurate" certainly ought to be changed, because you can not have a crop report that is accurate.

As to section 11 you will remember that in the old act four months was given as the time. This provides a time that, if this becomes a law, is altogether inadequate. It provides that no fine or imprisonment shall be imposed for any violation occurring before the first day of the second month following its passage.

As I understand it, there are two bills before this committee, this bill and the one that is numbered just before it, 11842. And I just want to say this, that if you ask us which death we would rather die, we would rather take the more merciful and quicker method than that which this bill prescribes, because either bill will mean death to the exchanges within a few years, and I judge simply from the experience we have had since the Government began hampering with this thing. The agitation there has already been, has so reduced the volume of speculative business as to make the markets unsatisfactory at present.

Mr. KINCHELOE. Do you think this bill is more radical than the original act?

Mr. GATES. Very much more.

Mr. TINCHER. What you mean is that you would rather we would pass the Gensman bill and put you out of business entirely?

Mr. GATES. Yes. Then you would know where you were at. I think a quick death is always preferable.

Mr. TINCHER. What you mean is that you know Congress hesitates to close the grain exchanges, and you know there is no danger in the world of our accepting that challenge to pass the Gensman bill?

Mr. GATES. I do not know what the committee may do as to that. The language of the bill is entirely similar, with certain exceptions. One cuts it off altogether, and the other permits it to go on under Government control.

Now, the grain trade has for a year and a half been willing to cooperate with the committees of Congress to get a Federal bill that will contain reasonable supervision, but that has seemed to be an excuse for going away beyond reasonable supervision, and saying that if the fellows will not stand for reasonable supervision we will put something additional into it that will make it "control." That is the tendency in this bill, possibly more than in the bill which was not sustained by the court.

Mr. KINCHELOE. I think you misconstrue the attitude of the committee. The only point with me is to regulate your exchanges so that the grower of grain will have ample protection. At the same time I do not want to destroy legitimate business.

Mr. TINCHER. I want to say, as one member of the committee, having the highest personal regard for the gentlemen who appear here and testify, that you have more uncertainty about what Congress is going to do to the exchanges than I have about what the exchanges are liable to do to the country. I think this is a subject on which Congress certainly should legislate, and I can not accept as anything but bluff your proposition that you would rather have us pass a bill to close the exchanges than to pass a bill to regulate them.

Mr. GATES. It is not bluff, Mr. Tincher. It has been seriously considered by the grain exchanges themselves whether it would not be well to close for a period, so that the country might see what the effect would be of that program.

Mr. TINCHER. You mean that you actually contemplated closing the exchanges to show what you could do to the country, so that, possibly, they would let you alone?

Mr. GATES. No; you are mistaken in that.

Mr. CLARKE. You are misconstruing his statement.

Mr. TINCHER. This is a pretty serious matter. It is a pretty serious matter to the producers of grain. It is a pretty serious matter to everyone.

Mr. GATES. It is. I think it is a more serious matter than you yourselves realize, and there is no one going to be hurt so much by a throwing of the machinery out of gear as the producer himself. There has not been anybody hurt so much so far as the producer.

Mr. TINCHER. You stated this morning that no one had yet admitted a public interest being in this grain-exchange business. I call your attention to the fact that Herbert Hoover, Julius Barnes, yourself, and everybody that has ever appeared before this committee prior to this morning has admitted that the grain markets of this country do have a public interest, that they are mammoth affairs, and must be dealt with from the standpoint of the public having a general interest in the grain market. Now, you come in this morning and prescribe a substitute for Federal legislation, some action by a committee—yourself and Mr. Gustafson and Clifford Thorne—and you say, and I think you are serious, that you would work the problem out better if Congress would just lay off and let you do it.

Mr. GATES. I said that in relation to paragraph (e) of section 3. I think it will get further in adjusting the differences between the producer and the exchanges than you will get through legislation.

Mr. TINCHER. Now, Mr. Gustafson—he is at the head of what is called the Grain Growers' Association?

Mr. GATES. Yes. sir.

Mr. TINCHER. That is an organization by which they are attempting to market their grain by cooperation. That has not proven very successful so far, has it?

Mr. GATES. I have not heard that they are marketing very much grain. I think there is some question as to when they will be in a position to market grain, and so far as I can learn they have not proceeded far enough with their plans to be in a position to market yet.

Mr. TINCHER. My theory about this bill is that if there is manipulation of prices on the Chicago Board of Trade, or any other board of trade, it ought to be stopped, and if there is manipulation that ought to be stopped this regulation will not hurt the exchanges. And I have a further theory that there are sufficient legal, bona fide transactions going on and the business is in such volume and of such importance and of such public interest that there is a legitimate end to it which will not be destroyed by legitimate regulation or legitimate supervision. Supervision will not destroy any legitimate business in this country.

Mr. GATES. I am not talking about supervision. I have tried to work out something on supervision. I have tried to get together with you on the matter

of supervision, but there always is the attempt to go further toward control, not to stop at supervision.

Mr. CLARKE. Was it not in your testimony here that you and the Secretary of Agriculture had agreed as to certain regulations, and then the bill went through the Senate, and then in the conference they slipped in that paragraph there that goes further than even the Secretary thought it was necessary to go? Was not that your testimony?

Mr. GATES. Yes; there were several changes made.

Mr. TINCHER. Do you mean to answer that question yes, that the conference slipped something into this bill that the Secretary of Agriculture was not for?

Mr. CLARKE. Why, there is no question about it.

Mr. TINCHER. I say there is; I happened to be on that conference.

Mr. CLARKE. Was not that paragraph put in there?

Mr. TINCHER. Anyone that has ever served on a conference committee knows that that would not be done.

Mr. CLARKE. Well, anybody that has ever served here knows that time and time again there have been things put in in conference that were not agreed on.

Mr. TINCHER. I will say, in justice to the Secretary, that I am thoroughly familiar with his attitude on that paragraph of the bill concerning which the gentleman testified, and while there may be some doubt about what the gentleman understood the Secretary to be for, I had my understanding as to what the Secretary was for when we agreed to strike out the Senate amendment and take the House bill as it passed. As I recall, the Senate receded on the amendment, so it was not putting in a paragraph.

Mr. GATES. I am not talking about slipping over anything——

Mr. TINCHER. Well, but you answered the question yes. I will tell you what that paragraph was. The proviso in that paragraph as finally worded was worded by Mr. McLaughlin of Michigan by an amendment on the floor of the House. The Senate conferees agreed to recede from their amendment, and the way that paragraph finally went into the bill it was worded by Mr. McLaughlin of Michigan.

Mr. CLARKE. You admit right here in your statement that there was something added in conference.

Mr. TINCHER. Not a word added in conference.

Mr. CLARKE. That is your statement.

Mr. TINCHER. It went into the bill exactly as it passed on the floor of the House.

Mr. KINCHELOE. Mr. Gates, let me ask you this: I have great confidence in your ability and technical knowledge of the grain exchanges; so I am going to remember the prophecy that you made a while ago, and see how it works out. You say this is going to put the grain exchanges out of business, and you are so confident of that fact that you prefer the Gensman bill to this. You do not want slow strangulation, but sudden death.

Now, if this bill passes as it is and becomes a law, and the Secretary administers it fairly and impartially, having in view the legitimacy of your business and at the same time the interests of the grain growers of the country, and he administers it fairly, as we have a right to assume he will do, it is still your opinion that the grain exchanges will be out of business in a few years? Is that true?

Mr. GATES. I think it will so hamper the machinery as to make it inadequate for the purposes that it has served for the last 30 years.

Mr. KINCHELOE. And you have in view that the Secretary is going to administer this fairly and impartially?

Mr. GATES. Yes, sir. All during the past two years while you have been agitating this there has not been enough speculative support for the market to pay for the cost of the service. I am in the business and I know.

Mr. VOIGT. Do you mean by that to say that the amount of speculation in grain has fallen off during the last year or two?

Mr. GATES. Yes, sir; very materially. The outside trading by the general public, which comes in the way of a supporting market, which is very largely the other side of your selling hedge, has been so inadequate as to make an unsatisfactory market during the past two years.

Mr. CLARKE. Mr. Gates, will you furnish us with a record of those transactions, showing that?

Mr. GATES. May I say this: A man is not compelled to trade; it is purely a voluntary thing. Now if you tell him that every transaction he is going to

make is going to be reported to the Secretary of Agriculture there are a great many people that are not going to trade.

Mr. KINCHELOE. Do you not think you would be exaggerating if you told that fellow that every transaction was going to be reported to the Secretary? Would it not be better to say that every transaction may be reported to the Secretary?

Mr. GATES. Well, one has the same effect as the other.

Mr. KINCHELOE. I do not believe that the Secretary of Agriculture in administering this law is going to demand any report from any grain exchange in the country unless he thinks there is something wrong. Why should he continually want reports from you fellows with no object in view?

Mr. GATES. The statement was made when the other bill was under consideration that they wanted it as a means of gathering information. Fragmentary information, gathered one day here and one day there, would not be satisfactory. You would have to have the information continuously if it were going to be of value in drawing conclusions.

Mr. KINCHELOE. Do you not think that the Secretary would not want to harass the business of the Nation unless he was of the opinion, unadvised at least, that there was something wrong with the transaction?

Mr. GATES. No; I do not think that. We had some experience with this matter of getting daily reports during the war. Unless you had those reports you could not tell what was going on from day to day.

Mr. KINCHELOE. But during the war those continuous reports were to enable the Government to keep up the supply of grain in this country.

Mr. GATES. No, indeed; the Government did not ever see the reports.

Mr. JONES. Mr. Gates, you made the statement a while ago that the grain exchanges had seriously considered outright closing, and then you significantly added "for a time"——

Mr. GATES. I did not mean officially.

Mr. JONES. Well, officially or unofficially, it is important. Then you added "for a time." You recognize that if they were to close the worst period would be immediately after they are closed, before other machinery were devised for handling the distribution of grain, do you not?

Mr. GATES. Yes.

Mr. JONES. So that when you added "for a time" you meant you would close just for the purpose of throwing the thing into confusion, and you realized that the worst confusion that could possibly result would be the confusion that immediately followed the closing?

Mr. GATES. Why, I am not advocating that, you understand.

Mr. JONES. But you said you seriously considered doing that?

Mr. GATES. Yes; it was seriously considered.

Mr. JONES. Now, what would be your purpose in closing just for a time?

Mr. GATES. It would be to get away from this continual annoyance of having to come to Washington to discuss legislation that was more or less intelligent in regard to the grain business.

Mr. JONES. You hoped that there would be unusual confusion immediately following the closing——

Mr. GATES. There was not any hope about it at all, Mr. Jones.

Mr. JONES. You never seriously considered closing permanently, did you?

Mr. GATES. Closing the board; whether it was ever opened again would be another question.

Mr. CLARKE. Mr. Gates, would you furnish, to put into the record, the transactions of the last two years in comparison with other years?

Mr. GATES. No; I would not. As a matter of fact, you can not get them.

Mr. VOIGHT. You say you think this agitation for this sort of legislation has caused a falling off in speculative business?

Mr. GATES. I do not think there is any doubt about it.

Mr. VOIGT. But do you not think that some of it might be traced to other causes?

Mr. GATES. There may be contributing causes.

Mr. VOIGT. Well, there has been a general depression in business in this country during the past two years, and business men generally have not transacted as much business as they did before. Do you not think that that same condition would apply to the grain exchanges?

Mr. GATES. No. I will tell you why. It is our experience that when general business is good our trade, the general speculative trade, is lighter, because people are busy with their own business; and when business is depressed in other

lines there is usually a larger volume of speculative business, because the people are trying to supplement their inadequate income with a little speculative profit.

Mr. VOIGT. And that, translated into other language, means that when people are not doing a satisfactory business in their own line they go out and do a little gambling?

Mr. GATES. You might so interpret it. I would not put it that way.

Mr. VOIGT. I want to ask you another question. It was reported generally in the newspapers of this country immediately after this law was declared unconstitutional by the Supreme Court that wheat had, I believe, gone up 4 cents a bushel, and the news items attributed the rise in the price of wheat to the fact that this legislation had been gotten out of the way by the Supreme Court decision. Do you believe that is true?

Mr. GATES. No; I do not think that had anything to do with it. I do not think you can hold the grain trade responsible for what the newspapers print, even about this bill. I do not think that is a fact.

Mr. VOIGT. Do you not think the thought was inspired?

Mr. GATES. No; I do not think so at all. I did not hear any talk of that kind around the exchange.

Mr. TINCHER. Mr. Chairman, I move that we adjourn until to-morrow morning at 10 o'clock, and close the hearings in opposition to the bill to-morrow.

(The motion, being duly seconded, was put and carried.)

(Whereupon, at 12.30 o'clock p. m. the committee adjourned to meet at 10 o'clock a. m. to-morrow, Friday, June 9, 1922.)

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTAIVES,
Friday, June 9, 1922.

The committee met at 10 o'clock a. m., Hon. Gilbert N. Haugen (chairman) presiding.

There were present: Mr. Haugen, Mr. McLaughlin of Michigan, Mr. Purnell, Mr. Voigt, Mr. McLaughlin of Nebraska, Mr. Riddick, Mr. Tincher, Mr. Williams, Mr. Hays, Mr. Thompson, Mr. Gernerd, Mr. Clague, Mr. Clarke, Mr. Rainey, Mr. Aswell, Mr. Kincheloe, and Mr. Jones.

ADDITIONAL STATEMENT OF HON. WALTER H. NEWTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA.

Mr. NEWTON. Mr. Chairman, I would like to make a request of the committee. Since I appeared before the committee yesterday morning it has come to my attention that of the Minnesota commissioners, three in number, all but one have been out of the city, and among them is Mr. O. P. B. Jacobson, who is in charge of the grain and warehouse division of the commission. Mr. Jacobson has been up in northern Minnesota, and his first knowledge of this matter was yesterday when he returned to St. Paul. He is of the opinion that the bill as it is drawn, and based upon the commerce clause, will absolutely do away with the very elaborate machinery that the State of Minnesota has enacted and put into effect for the handling of this matter and the regulating of the exchanges. Their last bit of legislation was passed at the legislative session of one or two years ago, I do not recall which, but I have a copy of the law here.

Mr. KINCHELOE. Does he mean the way the bill is drawn or that it can not be drawn in any way to meet the situation?

Mr. NEWTON. That I do not know. I know the objection is to the bill as it is drawn. I had the impression that he might be against the whole bill, but it is difficult to tell. He has requested the general solicitor of the associated railway and warehouse commissioners here in the city to appear against it, but Mr. Benton, of course, has no technical knowledge at all of this matter of trading in grain futures.

Mr. VOIGT. Mr. Newton, have you read the decision of the Supreme Court in the Dakota Grain case?

Mr. NEWTON. The Lempke case?

Mr. VOIGT. Yes.

Mr. NEWTON. No; I have not.

Mr. VOIGT. If you will read that case, you will probably come to the conclusion that no State legislation can be valid in the face of this legislation.

Mr. NEWTON. That certainly is true as to the transactions involved in the Lempke case. It is a question, of course, of whether trading in futures is a question of commerce such as was involved in the Lempke case, but the request I wanted to make of the committee, in order to make it possible for Mr. Jacobson to appear here, if he can come, is to request that he be heard Monday, if he can get here on Monday. Of course, he would have to leave Minneapolis to-night. That would get him here Sunday, so that Monday would be the earliest he could possibly appear here.

Mr. CLAGUE. Has he telegraphed you that he wants to come?

Mr. NEWTON. No; he simply telegraphed Mr. Benton that he wanted him to be heard, and I have heard from the governor's office on it.

Mr. ASWELL. It would be safer to agree to hear him Tuesday, would it not?

Mr. NEWTON. I think he could get here Monday. I do not see why he could not. He can leave Saturday night and get here Monday. I suppose all the members of the committee want to dispose of this matter just as quickly as it can be disposed of, and I have not any desire to not cooperate with them to that end.

Mr. KINCHELOE. What position do you say he holds?

Mr. NEWTON. He holds that the law as now drawn——

Mr. KINCHELOE (interposing). I mean what official position does he hold?

Mr. NEWTON. He is the commissioner in charge of grain matters. We have a commission of three members.

Mr. KINCHELOE. Is he a State officer or commissioner?

Mr. NEWTON. He is a State officer.

The CHAIRMAN. Mr. Jacobson has appeared before this committee several times before. I presume he is one of the best informed men in the country on the matter of inspection and weighing service in reference to grain grading. The question is whether the committee wants to extend the time for hearing.

Mr. RAINEY. I move that if he wants to come here to be heard and can come here Monday or Tuesday, that he be heard at that time by the committee.

Mr. ASWELL. I second the motion.

Mr. TINCHER. Let us see if this suggestion will not work out all right. I want to please everybody we can, but still I want to close these hearings. If Mr. Jacobson comes here Monday and proposes that the committee amend this bill, I would be perfectly willing to invite him before the committee, but at this time to adopt a motion providing for hearings as late as Monday or Tuesday will probably defeat our purpose of getting a day on this bill in the House next week. We have had Mr. Jacobson before the committee and we have a copy of the Minnesota law and have heard several witnesses from the State of Minnesota in reference to that law. So far as I am personally concerned, I think my views on your State laws have been expressed in the hearings as well as the views of a number of others, but if Mr. Jacobson gets here on Monday I would be in favor of calling him before the committee on the subject of a committee amendment to the bill, but not to open up the hearings now and continue them until Tuesday, which would mean that we would not get this bill up for consideration next week at all, and I would be dead against that.

Mr. CLAGUE. Our day is Thursday, is it not?

Mr. TINCHER. Yes; but if we do not close the hearings this week and begin to consider committee amendments, we will not get through by Thursday; but I want to treat Mr. Jacobson perfectly fairly and would be in favor of hearing him in reference to any amendment.

Mr. NEWTON. He may have objections to the bill that he does not feel can be corrected by an amendment, in which event I would not want him to be foreclosed from appearing here.

Mr. TINCHER. I do not want to foreclose him, but I do not propose now, unless you do it over my protest, to have a motion adopted to continue these hearings until next Tuesday or Monday.

Mr. RAINEY. Without any motion at all, let us have an understanding that if he comes here Monday or Tuesday we will hear him.

Mr. TINCHER. That we will hear him either on a committee amendment or in opposition to the bill, if he wants to be heard.

Mr. KINCHELOE. I think in view of the fact that this is a new procedure——

Mr. CLARKE. Who is the gentleman you are referring to?

Mr. NEWTON. Mr. O. P. B. Jacobson. He is one of the three railway and warehouse officials of the State of Minnesota, and is in direct charge of the division pertaining to grain, so he is an expert on that proposition.

Mr. ASWELL. I think in view of this position and necessarily his interest in this matter, that the motion should carry, and we should give him a hearing in the regular order next Monday.

Mr. NEWTON. We have a very elaborate machinery and an extensive law, and the State commission are of the opinion that this proposed bill will just simply wipe them out. Now, it is a legislative act they are called upon to administer, and they feel they owe an obligation to the people of the State to come down here and present their views. They have been away, and Mr. Jacobson just arrived back in St. Paul from up in the northern part of the State, where he has been on grain-inspection work, and so on, so that this is the first knowledge he has had of the detailed provisions of the proposed act.

Mr. JONES. Did he specify any particular portion of the bill that he thought was especially objectionable?

Mr. NEWTON. No.

Mr. JONES. Did he mention any part of the bill?

Mr. NEWTON. No; but preceding that, we heard from other members; that is, employees of the commission who were there in St. Paul, which I set forth yesterday.

Mr. TINCHER. I think Mr. Rainey's suggestion is a good one, and there is no question if he comes here Monday or Tuesday but what we will hear him, but I do not want to prevent the committee from going ahead and considering the bill in the meantime. That is the proposition involved. These gentlemen are going to close this morning, and I think the committee ought to go ahead and consider the bill, but not close up or preclude him from being heard if he comes here on Monday.

Mr. NEWTON. I do not want, of course, the members of the committee to foreclose their minds on what he has to say, neither do I have any desire to unduly delay your actions in the matter.

Mr. KINCHELOE. In view of the fact that this bill is a new departure, I would like to have whatever information this gentleman has in regard to the matter.

Mr. CLAGUE. Mr. Jacobson is the best posted man in the Northwest on grain and grain futures, and I think that is conceded by all.

Mr. KINCHELOE. Can he get here Monday?

Mr. NEWTON. Yes; I should, of course, telegraph him to come here on Monday.

Mr. MCLAUGHLIN of Michigan. Mr. Jacobson has been before the committee several times and as Mr. Clague has said, he is one of the best-posted men in the country on these matters, and if it is at all convenient I think he ought to be heard. Of course, I would not like to do anything that would be discourteous to him or foreclose us from getting the opinion of a man like Mr. Jacobson.

Mr. ASWELL. You do not want to go ahead and consider the bill before he gets here, do you?

Mr. MCLAUGHLIN of Michigan. I would not like to foreclose him by any definite action. If he is coming here at all it would not be courteous for him to come here and find everything closed against him. I would like to have the committee accommodate itself to Mr. Tincher's suggestion, but he suggests that we let Mr. Jacobson come here only to be heard on an amendment. It is difficult for us to tell now what we shall let Mr. Jacobson say, because we can not, of course, indicate to him what he is going to say.

Mr. TINCHER. No; and I never have had any notion of that kind. You know just as well as I do that if we adopt a motion setting hearings for some time next week what the effect will be. Mr. Newton said he could be here Monday, if at all. It is now suggested that somebody make a motion that we hear him Tuesday. If we are going to get this matter up next Thursday we will have to begin considering the bill at once, and, of course, everybody knows that if we do not pass this bill before the recess of the House it will not be passed so as to affect this year's wheat crop at all.

Mr. KINCHELOE. I think we ought to accommodate the gentleman and hear him on Monday, because if he can get here at all he can get here at that time.

Mr. NEWTON. I can not conceive of his not coming immediately, just as soon as he receives my wire, which means that he would be here in time to be heard on Monday.

Mr. MCLAUGHLIN of Michigan. You can wire him to come here as soon as he can and then we can hear him on Monday.

Mr. RAINEY. I submit the motion then that we hear the gentleman from Minnesota on Monday.

The CHAIRMAN. Mr. Rainey, do you couple with that a motion that the hearingse be closed definitely on Monday?

Mr. RAINEY. No; I would not, because I do not want to preclude anyone from having a chance to be heard, who can give information on the matter.

Mr. TINCHER. Then I move to amend the motion by moving that the hearings be closed on Monday. I do not want to preclude the Congress from having a chance to consider this bill at this session.

Mr. MCLAUGHLIN of Michigan. Are you going to do that in face of the fact that you do not know what Mr. Jacobson is going to say on Monday, and he is one of the most interested men in this matter in the country.

Mr. TINCHER. No; but if we postpone the hearings, somebody will be here Monday and want the committee to hear somebody else the following week.

The CHAIRMAN. It ought to be definitely known just what the committee is going to do, and everybody should be given an opportunity to be heard. So far, there have been no requests of this sort, but Mr. Jacobson represents a big and important State and is entitled to be heard.

Mr. ASWELL. Suppose Mr. Jacobson comes here Monday and opposes the bill and then it becomes necessary for somebody to appear in favor of the bill. I think it would be unwise to shut out anybody from being heard in this way.

Mr. TINCHER. We could have another motion made at that time. If it is the understanding that we are going to close the hearings Monday, they will all be here, and if it is the understanding we are going to kill this bill from time to time by continuing it over another week, that is another thing.

Mr. MCLAUGHLIN of Michigan. I think everybody knows that it is the feeling of the committee that they want to close these hearings as soon as possible, but without knowing what Mr. Jacobson is going to say, the committee itself may want to hear some one besides Mr. Jacobson.

The CHAIRMAN. You have heard the question.

Mr. PURNELL. What is the question?

The CHAIRMAN. State your amendment, Mr. Tincher.

Mr. TINCHER. That we hear Mr. Jacobson Monday and that we close the hearings on Monday.

Mr. ASWELL. The motion is to hear Mr. Jacobson and Mr. Tincher's amendment and to close the hearings Monday.

The CHAIRMAN. The amendment of Mr. Tincher comes up first, to close the hearings on Monday. All those who are in favor of the motion say aye and those opposed, no. The noes have it.

Mr. TINCHER. I will ask a roll call on that.

Mr. KINCHELOE. I am like Mr. McLaughlin, and I do not think there is any doubt but what we will close the hearings on Monday, and I want the bill to be passed on as soon as possible, but I am frank to say that so far as I am concerned, I am seeking all the light I can get in view of the fact that this is a new departure.

Mr. TINCHER. And I want to know whether we are going to get the bill out or not.

Mr. VOIGT. If the committee should decide Monday that further time is necessary, we could take that matter up then.

Mr. TINCHER. But if we do not have an understanding that we are going to close the hearings, we will not get the bill out.

Mr. RIDDICK. I think we all want to close the hearings on Monday unless something should develop that would make it inadvisable to do that.

Mr. TINCHER. Yesterday, with all the grain trade here, we asked them how much time they needed and they said they could close to-day. I am perfectly willing to be fair in this matter, but I do not want to have the legislation cut off.

(A roll call having been ordered, the clerk announced there were 8 ayes and 6 noes, so the amendment was carried.)

The CHAIRMAN. The question is on the motion as amended.

(The question having been put, the chairman announced that the motion as amended was adopted.)

The CHAIRMAN. Who is the next witness?

STATEMENT OF MR. FREDERICK B. WELLS, VICE PRESIDENT OF F. H. PEAVEY & CO., MINNEAPOLIS, MINN.

Mr. WELLS. Mr. Chairman and gentlemen, of necessity I will have to cover more or less of the ground covered by Mr. Gates yesterday, but I think that

possibly my viewpoint may in some respects differ from his in that I and, in fact, all the outside markets which in company with Mr. Gates I represent have slightly different interests in certain lines from the great central market of Chicago. In other words, our chief interest is in the use of the markets from the standpoint of cash grain handlers.

I will confess that when I listened to the statement of Mr. Morrill, Solicitor for the Department of Agriculture, on the first day of the hearings I was left with the impression that this committee was possibly more interested in putting out a bill which might be declared constitutional by the courts than in developing a bill which would accomplish the results which they desired without inflicting a hardship upon the marketing system of the country, and I will have to confess that that impression has not as yet been entirely dispelled. I am not going to attempt to argue the legal phases of the bill, but from a layman's point of view there are certain portions of Mr. Morrill's testimony upon which I would like to comment, because they seem to be of vital import from a grain man's standpoint as well as from that of a lawyer.

Great stress was laid upon the decision in the Packers and Stockyards case, and I would like to read Mr. Morrill's final statement in regard to that decision. He says:

"In the packers and stockyards decision—and in referring to the packers and stockyards decision I do not mean to imply that the proposed regulation of the future exchanges is strictly comparable with the Packers and Stockyards case, because there is quite a fundamental and essential difference between the two, still there are certain statements made in the packers and stockyards decision that have a bearing upon the matter before you."

Now, I would like to point out very briefly the fundamental and essential differences to which Mr. Morrill refers.

You are all familiar with the packers and stockyards decision, and even a layman, I think, can pick out certain very clear distinctions between the matter covered by that decision and the subject now before you for consideration. In the first place the object of the bill. The object to be secured by the act was the free and unburdened flow of live stock from the ranges and farms of the West and Southwest through the great stockyards, etc. Now, the object of the bill before you for consideration is not to secure the free and unburdened flow of grain from the farms of the West and Southwest to the consuming and distributing centers. The object is to control a method of doing business which has been declared intrastate and which, if it has any connection at all with interstate commerce, is decidedly indirect and purely incidental.

Mr. TINCHER. Mr. Wells, I can not see where you see any difference at all between the two propositions. There was not any complaint in the stockyards legislation that they were mistreating the stock or not feeding the stock or anything like that, but it was purely a matter of handling that property, which certainly can not be any more of a public necessity than handling the grain in such a way that the producer and consumer have fair treatment in commerce.

Mr. WELLS. May I just go on, Mr. Tincher, and develop the thought which I have in mind, if it is worthy of consideration?

Now, the reasons for the stock yards act were as follows:

"The chief evil feared is the monopoly of the packers enabling them unduly and arbitrarily to lower prices to the shipper who sells"—

There is no claim made in the record so far as I can find that future trading unduly and arbitrarily lowers prices to the shipper or that it produces a monopoly.

Mr. TINCHER. The entire claim made is that the manipulation of future trading lowers the price to the producer and does not help the price to the consumer, and the two things are absolutely on all fours, and that has been the case throughout the record. I do not think any witness who has testified for the leg slation——

Mr. WELLS (interposing). That is your individual view of what is shown in the record, but I can not find that it is in the record as coming from people competent to make such statements. There were a number of people who spoke before this committee, whose statements were based upon prejudice rather than upon experience.

Mr. TINCHER. Well, I will give you a citation so that you may look this up in the record: Hoover, Julius Barnes, and the gentleman who appeared here yesterday, Mr. Gates, Mr. Wells, and all of them admitted that manipulation was possible, some said it was hardly probable, but all admitted that it had happened in the past and all admitted that under the present system it was

possible for it to happen again, and I will give you a specific instance. Mr. Barnes, who knew as much about it as anyone, admitted the manipulation practiced by the English when they came over here to purchase wheat, when they bore down the price of wheat and then purchased the wheat from the producer at a less price than the former market price.

Mr. WELLS. Those are abnormal and unusual happenings and no part of the constant practice. May I continue with my comments on the reasons for this act——

Mr. TINCHER. Yes; but I thought we could get along better if we had both of our views expressed.

Mr. WELLS. Yes.

"Another evil which it sought to provide against by the act was exorbitant charges, duplications of commissions, deceptive practices in respect of prices, in the passage of the live stock through the stockyards."

There are no such charges as regards the handling of grain made in the record so far as I can find.

Another reason for the act or justification was "expenses incurred in the passage through the stockyards necessarily reduce the price received by the shipper."

I think the testimony before this committee in the hearings on H. R. 5676 and before that on H. R. 2363 show that the margin exacted on grain from the producer to the ultimate consumer was smaller than on any other commodity handled anywhere else in the world.

Mr. TINCHER. But they also showed, without any contradiction, that every bushel of grain was dealt in as many as 40 or 50 times.

Mr. WELLS. And referring again to Mr. Hoover, Mr. Hoover said it did not make any difference if it was 100 times, that that loss fell not on the producer but on the insurer or the underwriter who carried the risk. Now, here, it seems to me, is the great difference. In justifying Federal restraint, this statement is made:

"Whatever amounts to more or less constant practice and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it."

Now, the practices which were to be regulated under the packers and stockyards act were, apparently, according to this statement, more or less constant practices.

Granting, for the sake of argument, that manipulation has at times taken place in the grain market, it has been the abnormal, it has been the unusual, and it has not been more or less constant. It could not have been more or less constant because had that happened, the whole hedging system would have broken down, and I would like to call your attention that I am interested in the use of the futures market as a hedger, a handler of cash grain. Manipulations I deprecate as much as any one deprecates it, but I do say that it is the unusual thing and is not the constant thing. It is the thing which happens under abnormal conditions. It is a thing which is made possible only by abnormal conditions and in the absence of abnormal conditions manipulation can not and does not take place.

Mr. TINCHER. Would it be your theory, since you are addressing yourself to a legal proposition, that the courts would say they could only regulate such manipulation where it was a normal condition and not where it was a possible condition brought about by abnormal times?

Mr. WELLS. They state "more or less constant practice."

Mr. TINCHER. Do you think they meant to confine themselves to constant practices?

Mr. WELLS. I do not know. I am simply giving a grain man's view of wherein the conditions surrounding this decision differ from the conditions which would exist in the enactment of a statute such as you propose; that is all.

Now, I want to call your attention to one thing which possibly has been brought to your attention before, but I think it is overlooked very often and that is, it is quite different thing to regulate future trading and to regulate a business like the handling of live stock. Future trading to be of any benefit and have any economic value requires a volume of trade. It requires the presence in the market of individuals, traders, other than those who are directly and constantly engaged in the handling of grain. Unwittingly, very likely, but

actually those traders take the part of underwriters. They underwrite the risk of fluctuation in price. There is nothing to compel them to come into the market. There is nothing to keep them in the market unless they think there is an opportunity for them to make a profit. The moment you surround a market with arbitrary rules and regulations, the moment you create any uncertainty as to the validity of a contract or as to whether the terms of a contract could in any way be changed, that moment you drive this trader—call him speculator, call him gambler, if you will, but in actual fact, he is an underwriter of the risk—you drive him from the market. When you drive him from the market your whole insurance fabric is gone. Now, it does not take very much to accomplish that.

We have seen in Minnesota in the last year and a half a situation develop which renders our Minneapolis market and the Duluth market of relatively little value to the hedger as compared to the markets which were in existence prior to Government administration during the war.

Almost immediately after the termination of Government control, when our markets were opened there began agitation for the elimination of future trading or restrictions around future trading, the doing away with short selling and all sorts of restraints upon the futures markets. Coincident with that agitation, which started out in our part of the country as State agitation and rapidly became Federal or national, came a falling off in the volume of trade until to-day there is traded in the Minneapolis market less than one-third of the pre-war volume. There has been no such falling off in the crops. There has been no such falling off in the milling activities. There has been no such falling off in the elevator activities, but the fact remains that the volume of future trading in the Minneapolis and Duluth markets—and the same thing is true in Kansas City—has fallen off to such an extent that those markets at times are very unsatisfactory from a hedger's point of view. I am talking purely as a hedger.

Mr. CLARKE. Is your conclusion from that the same as Mr. Gates's, that when business conditions generally are at a lower ebb, your trades in grain futures and the rest of it increase proportionately?

Mr. WELLS. I could make no statement as to that, Mr. Clarke, because I am not engaged in handling futures for anybody else. I simply use them as insurance against cash grain.

Mr. KINCHELOE. Do you think the falling off in volume and in activity has affected the price to the grower any?

Mr. WELLS. I do not think there is any question about it.

Mr. ASWELL. In what way has it affected the price to the grower?

Mr. WELLS. It has affected the price because at times when a man wishes to hedge now there is an absence of buyers, and the market sags and sags until it reaches a level where some trader is willing to make a purchase. In other words, you can not execute a trade to-day in the Minneapolis market—an offer to sell 10,000 bushels of wheat, for instance, within a range of a quarter of a cent, and that was common before the war.

Mr. ASWELL. What has caused this falling off—the agitation?

Mr. WELLS. The falling off came as a result of this constant agitation against future trading and the fact and belief among uninformed people that future trading was under such restraint that you could never tell whether you would be allowed to complete your contract or whether it would be closed out at any time, prejudicial to your interest.

Mr. KINCHELOE. When did the legislature of Minnesota pass the first act undertaking to regulate trading in grain?

Mr. WELLS. In February, 1921. The markets were reopened, I think, in July, 1920, and it was during the following winter. The agitation began in the Fall, immediately following the opening of the market.

Mr. ASWELL. Was that agitation by the grain producers?

Mr. WELLS. The agitation was largely political. The agitation originated, I think, with some of the radical farm organizations.

Mr. PURNELL. What effect did declaring section 4 of this act to be unconstitutional have on the market?

Mr. WELLS. It had no effect, in my judgment.

Mr. PURNELL. There was no natural or artificial result coming from it?

Mr. WELLS. I do not think there was any whatsoever. I know so far as the men with whom I am brought in contact are concerned, the tendency was to be rather despondent because we felt that something worse would probably be evolved, and we were not disappointed.

Mr. JONES. Then why did you attack the act?

Mr. WELLS. We did not attack it.

Mr. JONES. Who was responsible for the attack?

Mr. WELLS. A group of members of one exchange attacked it as affecting their property rights.

Mr. JONES. What exchange was that?

Mr. WELLS. The Chicago exchange, and of course it was natural it should be that exchange because they have by far the largest business.

Mr. JONES. They have the biggest wheat market in this country?

Mr. WELLS. They have the biggest futures market in the world.

Mr. ASWELL. Did your board of trade join them in that suit?

Mr. WELLS. Our board of trade and every other board of trade refused and every contract market refused. Furthermore, we came down here and in collaboration with the Solicitor of the Department of Agriculture we agreed upon the rules and regulations which would be necessary in order to become contract markets.

Mr. RAINEY. And the Chicago Board of Trade did not join in that suit.

Mr. WELLS. No, sir.

Mr. KINCHELOE. A member of the Chicago Board of Trade brought the suit, a man by the name of Hill, and employed the attorney for the Chicago Board of Trade to bring the suit.

Mr. WELLS. That is very true, but he was not acting for the Chicago Board of Trade. Hill's position was exactly the same as that of a minority stockholder.

Mr. RAINEY. I presume that was because the attorney for the Chicago Board of Trade necessarily knew all the ins and outs of the matter.

Mr. TINCHER. I really think the Chicago Board of Trade wants the legislation judging from what Mr. Gates said yesterday.

Mr. MCLAUGHLIN of Michigan. I do not remember definitely about it just now, but my impression is that it appears from the record that the board of trade as an entity was asked to begin the suit and refused.

Mr. WELLS. They did.

Mr. TINCHER. And they were made defendants.

Mr. MCLAUGHLIN of Michigan. And the individual members went ahead and the court said that they had a right to come in.

Mr. WELLS. That was the situation exactly, Mr. McLaughlin.

Mr. CLAGUE. Was the attorney for the board of trade removed? I was told that the attorney for the board of trade was removed.

Mr. WELLS. No; I do not think he was removed, but he did not function for the board of trade in the litigation in question.

Mr. KINCHELOE. There were eight members of the board of trade that brought this suit and they invited others that wanted to do so to come in.

Mr. RAINEY. Mr. Wells, in your business, do you come in contact with many of the producers.

Mr. WELLS. I come in contact with a great many of the producers.

Mr. RAINEY. Do you find any considerable agitation for the passage of such a bill as we have before us among the producers?

Mr. WELLS. I have found no agitation for such a bill among those who knew anything about the marketing system. I can say furthermore that in contact, and frequent contact, with members of the Farm Bureau Federation I find no inclination on their part to do anything to break down the present marketing system.

Mr. ASWELL. Was there anybody running for office out there on this issue?

Mr. WELLS. No; I think not.

Mr. KINCHELOE. There is agitation among the farm organizations, including the Farm Bureau, that they be permitted to become members of the board of trade and at the same time prorate their earnings, is there not?

Mr. WELLS. There is among some farmers' organizations, and I will come to that, if I may, in my consideration of the bill.

The CHAIRMAN. Do we understand you to say that the farmers' bureaus are opposed to this bill?

Mr. WELLS. No; I did not say that. I said they were opposed to anything that would break down the existing marketing machinery.

The CHAIRMAN. That is indefinite. Just what are they for?

Mr. WELLS. I think they are for reasonable supervision which will put the Department of Agriculture in possession of the necessary information upon which to base recommendations for legislation in the future should that prove necessary.

The CHAIRMAN. Are we to understand that they are opposed, then, to regulation?

Mr. WELLS. I can not say how they stand officially on that.

Mr. TINCHER. I think it is only fair to have it in the record that the Farmers' Union, the Farm Bureau, the Grange, and the Equity are for this legislation and for this bill. If it is necessary to have them come here and repeat their statements, we can do that. I have been in communication with their offices here on that matter.

Mr. WELLS. I am not pretending to speak for those organizations. I am only speaking for the men with whom I come in contact.

The CHAIRMAN. You said you had conferred with many of them and had some knowledge of their position.

Mr. WELLS. I never said, Mr. Chairman, that they were opposed to this bill. I said they were opposed to anything that would impair the efficiency of the existing marketing machinery.

The CHAIRMAN. That is very indefinite. Of course everybody is in favor of that.

Mr. PURNELL. Do they think that this bill will have the effect of impairing the present marketing machinery?

Mr. WELLS. I do not think that any of them have had an opportunity to know what this bill means or what it will do. This bill, in my opinion, will lead to endless litigation, because it leaves open so many questions that will have to be determined sooner or later.

The CHAIRMAN. Now, that is the position that was taken by the gentlemen who appeared before this committee in opposition to the cotton futures act. We passed a law with reference to cotton futures. We do not pass laws or report out bills for the purpose of killing off anybody, but what we are trying to do is to provide for regulation; that was the purpose of the cotton futures act. I know of no opposition to that act now. Would you be willing to accept that same kind of a bill with reference to future trading in grain, the same rules and regulations that are provided for in the cotton futures act?

Mr. WELLS. So far as they are applicable.

The CHAIRMAN. This bill does not go that far.

Mr. WELLS. I beg your pardon. The cotton futures act does not regulate cotton exchanges in any way except on the grades that may be delivered on future contracts and the variations in price between the contract grade and the grades which may be delivered on contracts.

The CHAIRMAN. That is what was contemplated, that is what you are objecting to.

Mr. WELLS. That is only one feature.

The CHAIRMAN. If you were willing to accept what is in the cotton futures act I would be perfectly willing to accept that right here, but I have given up any hope of going that far in this bill. I tried to get a few similar provisions in the first bill but they were objected to; the bill went to the Senate, and came back from the Senate with amendments. They might just as well have stricken out everything after the enacting clause. We did put a few things back into the bill, and after conference it was passed about as it was reported from this committee; whoever submitted those amendments in the Senate certainly did improve on the House bill. If the exchange itself had written the amendments it could not have prepared amendments more satisfactory to the exchanges. Now, if it is the purpose to write a bill of that kind, which means nothing after it is enacted, what is the use of spending any time on it? If you are prepared for regulation that means something and gives the Secretary of Agriculture or somebody else the power to regulate these matters, then let us go on and prepare a bill; but if you are absolutely opposed to anything of that kind, what is the use of spending any time on it?

Mr. WELLS. Mr. Chairman——

The CHAIRMAN. You will have to be either for or against regulation, and if you are for regulation, what kind of regulation shall we have and what provisions shall we incorporate in the bill to provide for that?

Mr. WELLS. In the first place, reference is made to the cotton futures act, when that act does not pretend to say what form of reports shall be made, and does not pretend to say what members shall be admitted.

The CHAIRMAN. It is not necessary to discuss that at length. It provides for the determination of the commercial differences, also determines the standards and grades to be delivered.

Mr. WELLS. Yes; that is all.

The CHAIRMAN. And they are the official standards. That was suggested in this bill you were opposed to that you did not think that ought to go in. That is the very important part of the legislation. What we have in this bill here is simply a matter of publicity. Very well, as far as it goes, but it seems if anybody stands for legislation at all, they can not stand for anything less than what is in this bill. It may need some amendment, but unless we have a bill worth something, what is the use of spending weeks on hearings and taking up the time of the committee all the summer on something that does not amount to anything?

Mr. WELLS. If I may, I will proceed with a very brief discussion of the bill itself.

Passing over section 2, with its subdivisions (a) and (b), which contain a large amount of new matter and are really just definitions to which no objection is raised, we come to section 3, which is a recital, as I take it, of the reasons for imposing governmental regulations upon future trading. I wish to go on record as saying that after looking over the record before this committee I find nothing that would justify the words on page 4, line 5, beginning with the last word:

"That the transactions on such boards are extremely susceptible to speculation, manipulation, and control and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control"—

Skipping down to line 12—

"And makes such business unsafe and uncertain from time to time."

As I say, I fail to find in the record any testimony from men of experience that transactions are extremely susceptible to speculation, manipulation, and control. It has been admitted that at times, under abnormal conditions, there have been evidences of manipulation, possibly there has been manipulation, but it is not a continuing feature of the markets; it is something which happens in all kinds of markets under abnormal conditions.

Mr. VOIGT. Mr. Wells, right there, let me ask you this: If this sort of manipulation can take place under abnormal conditions, then it seems to me we ought to have some regulatory power in existence to avoid the manipulation, no matter under what conditions it occurs. If your statement is true that the manipulation takes place only at rare times and that ordinarily the market runs along in an orderly and honest course, then do you think that any Secretary of Agriculture would interfere with the markets except in case of manipulation?

Mr. WELLS. I think that the provision which is made in this bill later on, requiring the boards to restrain members from manipulation, together with the penalty which is inflicted upon any individual who attempts manipulation, would have the effect which is desired. I think that the moment that power is put in the hands of anyone, whether the Secretary of Agriculture, or whoever it may be, at that moment you create the uncertainty and doubt in the minds of traders to which I referred a few minutes ago, which drives them out of the market.

Under the Minnesota law there have been no prosecutions; there have been no threats of prosecution; but nevertheless traders have left our market because there was on the statute books a law, which, perhaps, is and perhaps is not constitutional, but it is there, and they fear that law might be enforced to their loss.

Mr. KINCHELOE. Do you think the Minnesota law is more drastic than this bill?

Mr. WELLS. In some ways it is; in some ways not.

Mr. KINCHELOE. I mean, as a general proposition.

Mr. WELLS. Well, nobody knows what it means. I think that in some ways it is more drastic.

Mr. KINCHELOE. You mean the State law is?

Mr. WELLS. Yes.

Mr. TINCHER. I am not willing, Mr. Wells, to let your statement with reference to the record go unchallenged. I do not want to extend this discussion in the record, but a certain witness testified before the committee, and I think he said, or perhaps he quoted somebody as saying, that gamblers or speculators could get together secretly and conspire to affect the prices.

Mr. WELLS. Yes; that is a quotation from a statement I made, but it is a quotation in part. I said they could affect the prices; that such a thing was a possibility; that they could affect them temporarily. The balance of that statement was not in the record.

Mr. TINCHER. If they could affect the market temporarily, they could probably affect it long enough to get the grain out of the farmers' hands, at any rate.

Mr. WELLS. No; I think not.

Mr. TINCHER. Right after that testimony you went into some detail concerning a certain manipulation of the market that was carried on by the English buyers, whom you described then as the keenest merchants in the world, so far as you knew. That was permissible and possible under this system that we are now attempting to regulate, was it not?

Mr. WELLS. That took place when governmental agencies were doing the buying, when individuals were eliminated, and as a result of a war-time measure. That condition does not exist to-day and never existed before that time.

Mr. TINCHER. Well, now, the price of grain goes down in the season that the farmers have to sell it. If the speculators got together and conspired and affected the price all during that season, that would affect the farmers' grain in any other season, would it not?

Mr. WELLS. Considering that as a hypothetical case, yes. But taking the figures of the Department of Agriculture for a period of 20 years you will find that the price of grain in the fall was never at a sufficient discount under the price which prevailed in the spring to pay storage interest and insurance on the money invested in carrying the grain. Consequently your statement is, hypothetically, all right, but the facts do not bear it out.

Mr. TINCHER. Right on that point: If you concede that your present marketing system—as you conceded before the Supreme Court used this language—that there was a possibility under that system of speculators conspiring together to affect the price of grain, won't you go further and concede in this hearing that there is a public interest attaching to this matter——

Mr. WELLS. No.

Mr. TINCHER (continuing). That the foodstuffs of this country, such as grain, which is used in every household in the United States and that the farmer of necessity to market in interstate commerce—that that is a question in which there is a public interest? Do you think it would be right to allow one man, if it were possible under the system, to affect those prices by manipulation?

Mr. WELLS. No; I do not; but I do not think it is possible under the system.

Mr. TINCHER. But do you not think there would be a public interest attached, if that were true?

Mr. WELLS. I think if there were a constant or frequent practice of affecting the price received by the producer by future trading, there is a possibility that there might be a public interest, but I do not think that condition exists.

Mr. TINCHER. Let me get your distinction, Mr. Wells. Your distinction is that inasmuch as there is only an occasional affecting of the price, perhaps the public interest does not attach?

Mr. WELLS. I think that future trading is merely an incident indirectly relating to the handling of grain, just as fire insurance is indirectly related to the handling of grain.

Mr. TINCHER. But when you are claiming for future trading the advantages of insurance and the advantage of hedging, how can you say that it is merely incidental?

Mr. WELLS. It is an incident. I can get along without future trading, but I will have to transfer the risk now carried by the trader to the farmer. In other words, I will have to buy cheaper from the producer and operate on a wider margin.

Mr. TINCHER. Take the May option, for instance, which was $1.48 on the 15th day of May and closed at $1.16 on the 31st day of May. I suppose that when section 4 was held unconstitutional, leaving the trading absolutely free and easy, they just transferred the risk to the farmer, did they?

Mr. WELLS. No; I do not think it had anything to do with declaring anything unconstitutional.

Mr. TINCHER. The Chicago newspapers, which I feel sure would not displease the Chicago Board of Trade, carried the headlines the next day that May options had increased 4 cents a bushel.

Mr. WELLS. You can not claim that the Chicago Board of Trade or the Minneapolis Chamber of Commerce is responsible for the stories written up for public consumption by market reporters, because they are not.

Mr. TINCHER. I do not charge that, but I do believe that if wheat had gone up 32 cents instead of down between the 15th and the 31st of May, the Chicago Board of Trade would have claimed credit for that.

Mr. WELLS. I can only say that if you were in the grain trade you would know that the advance in grain was led by the foreign markets. They controlled the situation. The Argentine and Liverpool markets went up more rapidly than our markets went up.

Mr. TINCHER. You cite the Minnesota law and this law that was held unconstitutional as probably contributing to the decrease in the volume of future trading?

Mr. WELLS. Yes.

Mr. TINCHER. Now, let me call your attention to this: If you are going to account for the decrease in the price of wheat by the decrease in the volume of future trading, why, you are welcome to that comparison, because the present price of wheat as compared with pre-war prices is more favorable to the producer than the price of any other article I know of. For instance, there never was a time in the depression after the war when the price of wheat got down as low as it was in the month of August immediately prior to the breaking out of the World War, which created a market for wheat. That is not true of any other farm product. So I do not see that we can give you any great credit for decreasing the volume of trading in futures in the grain market.

Mr. WELLS. I am not citing that decrease in volume as affecting prices particularly. I do say I think it has a depressing effect. because there are not the buyers in the market that there used to be, and the public generally in the market were buyers.

Mr. JONES. You said, Mr. Wells, that the decrease in buying in the Minneapolis market was due to the Minnesota law. Now, Mr. Gates yesterday complained of a similar decrease in the Chicago market. The Minnesota law does not apply there, does it?

Mr. WELLS. The Minnesota law affected us before any other law came into effect. Then came the agitation for a Federal law. It is the agitation that has driven the traders out of the grain market. No action has ever been taken under the Minnesota law. Illinois agitated for a similar law last winter, and that undoubtedly hurt the Chicago market just as directly as the Minnesota law hurt the Minneapolis market.

Mr. JONES. Oh, well, there has been agitation for the last 25 years, to my knowledge.

Mr. WELLS. I know; but the agitation has been far more violent in the last two years than it was over any extended period prior to that time.

Mr. JONES. There have been bills before the House here ever since I have taken any interest in poiltics. They have been introduced, and they have had hearings on them from time to time.

Mr. WELLS. Yes; but the matter has never taken the serious aspect that it has in the last two years.

Mr. JONES. I think it would be fair both to you and to the committee if you would give us your idea of the real reason for wheat going down between May 15 and May 31, if you have reached any conclusion on that subject.

Mr. WELLS. As a matter of fact, I suppose you would find almost any man in the grain business more reluctant to express an opinion as to the reasons for a price movement than some man out on the curbstone here. I do not pretend to know what makes wheat go up and down, except with reference to the general price levels. As far as any market fluctuations are concerned, I do not follow them at all.

Mr. VOIGT. Well, what is your suspicion about the reason for that recent violent drop?

Mr. WELLS. My suspicion is that the wheat was brought to Chicago and delivered on the contracts, and the short interest in the market was eliminated.

Mr. JONES. There have been no Government crop reports in that period?

Mr. WELLS. No. There was a natural congestion, and when it was satisfied the price sagged off to where it probably would have been anyway.

Mr. JONES. There was local congestion in the centers, and the grain that happened to be shipped in——

Mr. WELLS. Satisfied that condition, down to a level which it would have held, probably, but for that congestion.

Mr. RAINEY. And the article that Mr. Tincher referred to in the Chicago newspaper merely proved the unfamiliarity that the particular gentleman who wrote it had with the grain trade?

Mr. WELLS. Exactly. I might cite a case right in my own market. As a matter of fact, my own market is away above the Chicago market.

Mr. KINCHELOE. In price?

Mr. WELLS. In price; yes—away above it. All during the so-called congestion in Chicago cash wheat in Minnepaolis sold at a premium over Chicago all the time.

Mr. KINCHELOE. The same kind of wheat?

Mr. WELLS. No; spring wheat. We are a spring-wheat market.

Mr. JONES. Has there been any corresponding reduction in the price of flour during that period—during the month of May—when it practically went down 32 cents a bushel?

Mr. WELLS. There has not been that drop in the Minneapolis market.

Mr. JONES. How much of a drop has there been in that period?

Mr. WELLS. I do not know, to tell you the truth; but I know that our market has not dropped as rapidly as the Chicago market.

Mr. JONES. There is not anything like 32 cents difference in the market?

Mr. WELLS. Yes; there is. Our July wheat is 32 cents over Chicago to-day, and our cash wheat is 6 or 7 cents over July.

Mr. KINCHELOE. Do I understand you to say it is the same kind of wheat?

Mr. WELLS. This is spring wheat.

Mr. KINCHELOE. On both markets?

Mr. WELLS. No; spring wheat on our market and winter wheat in Chicago.

Mr. JONES. So your future trading and your broad liquid market does not seem to keep these violent fluctations from coming. If the price on one board of trade is 30 cents higher than on the other, why, the insurance is not worth anything apparently.

Mr. WELLS. Yes. Ours is an entirely different market from Chicago; it is a different entity.

Mr. JONES. Chicago is purely a future market?

Mr. WELLS. Yes. Why is our market the way it is? Because there is not the cash wheat to ship in.

Mr. KINCHELOE. Do you not think that might cut a figure in the difference in the price?

Mr. WELLS. Yes; it is scarcity.

Mr. KINCHELOE. Spring wheat sells for more than fall wheat, does it not?

Mr. WELLS. Generally, but it is the scarcity of spring wheat at the present time, at the tail end of the crop, that affects our market. But it has not been my intention, gentlemen, to go into this question of prices, because you can argue that out as far as you like and not get anywhere on it. It is just the general principles I want to touch upon.

The CHAIRMAN. It is suggested at this end of the table that that has been gone over. Perhaps you had better devote yourself to the changes you desire to suggest.

Mr. WELLS. If you will let me continue with my consideration of the bill I will suggest changes as I come to them.

In connection with section 3 I have said that I do not believe the record afforded a foundation for that statement——

Mr. JONES. Every one of you gentlemen has spent a great deal of time in discussing section 3. That is more or less of a preliminary statement; it just declares——

Mr. WELLS. I know, but it is the basis for section 4, and it concludes with the statement that these conditions recited render regulation imperative for the protection of such commerce and the national public interest therein. So it is of very great importance.

Mr. JONES. It is of importance purely from the standpoint of the legality of the bill, and that is all I see.

Mr. WELLS. In connection with section 3 I should like to introduce a report which went to the House of Representatives, Report No. 44, Sixty-seventh Congress, first session, a report on H. R. 5676. I have read that report carefully, and it apparently contains nothing which would afford a basis for the statements made in section 3.

Mr. KINCHELOE. That is the report on the original bill as it passed the House?

Mr. WELLS. Yes, sir.

Mr. TINCHER. Well, the new report will be more voluminous, because the Supreme Court is attaching more importance to the reports now.

(The report submitted by Mr. Wells is here printed in full, as follows:)

[House Report No. 44, Sixty-seventh Congress, first session.]

The Committee on Agriculture, to whom was referred the bill (H. R. 5676) taxing contracts for the sale of grain for future delivery, and options for such contracts, and providing for the regulation of boards of trade, and for other purposes, having considered the same, report thereon with the unanimous recommendation of the entire committee that the bill do pass.

Hearings on a similar bill, introduced on December 6, 1920, were held by the committee almost daily during the month of January, 1921, and were concluded in February. Scores of witnesses were heard by the committee, among which were Secretary of Commerce Hoover; Julius H. Barnes, late head of the United States Grain Corporation; Clifford Thorne, who had made a careful study of the existing situation for the American Farm Bureau Federation, and the heads of all of the great grain exchanges of the United States. Every angle of future-trading legislation was thoroughly discussed.

As a result of the great mass of testimony offered the committee during the last session of the Sixty-sixth Congress, House bill 2363, taxing contracts for the sale of grain for future delivery and options for such contracts, and providing for the regulation of boards of trade, and for other purposes, was introduced on the first day of the present session, and referred to the committee.

A copy of the complete hearings on future-trading legislation, consisting of a volume of 1,070 pages, comprising the testimony of 80 witnesses, before the committee during the last session of the Sixty-sixth Congress, was distributed to each new member of the committee, for his perusal and study; and the information contained therein was examined carefully by the new members. Daily hearings on the new measure were held by the committee for one week, at which hearings the grain exchanges were again represented, as well as all other interests.

At the close of the hearings the committee were in complete accord in the recognition of the fact that the legislation would be beneficial and should be enacted; and the bill as agreed to was reintroduced on May 3, 1921, and designated as H. R. 5676. It meets the views of the entire membership of the committee and is in complete consonance with the views of the Secretary of Agriculture. It has also the indorsement of the trade in general, of the farmers and people interested in agriculture, including the National Grange, Farmers' Union, American Farm Bureau Federation, and of the consuming public.

This measure will absolutely wipe out of existence the practice of "puts" and "calls," "ups" and "downs," and "indemnities." And while it will not abolish speculation or what is known to the trade as the "legitimate hedge," it will absolutely destroy manipulation, and it will make for uniformity among all markets.

Mr. RIDDICK. Mr. Wells, in your judgment, did the bill as originally passed interfere with the flow of grain from the producer to the consumer?

Mr. WELLS. No.

Mr. RIDDICK. But you think this bill does?

Mr. WELLS. Well, I think the bill as it is does interfere with the hedging markets.

Mr. RIDDICK. Did it interfere with the flow of grain from the producer to the consumer, at the proper price?

Mr. WELLS. I will answer that by saying that in my opinion, based on 30 years' experience, there is nothing in future trading that interferes with the flow of grain from the producer to the consumer.

Mr. TINCHER. Well, the price of grain would affect the flow, would it not?

Mr. WELLS. It never has been demonstrated that the price of grain affects it in any way except favorably, taking it by and large.

Mr. TINCHER. But I say, would the price of grain affect the flow of grain in commerce?

Mr. WELLS. Prices do not affect the flow so much as the relative prices of markets.

Mr. TINCHER. All right. Do the relative prices affect the flow of grain?

Mr. WELLS. The relative prices affect distribution, but they offer no impediment or obstruction whatsoever. It would affect the distribution, the available supply going to those centers of distribution where the supplies were required.

Mr. TINCHER. Now, then, your statement that prices would affect distribution, or flow——

Mr. WELLS. Relative prices.

Mr. TINCHER (continuing). And your statement or admission that speculators can conspire together to affect the price——

Mr. WELLS. I have not made the statement that speculators can conspire together to affect the prices. I said that if they conspired together it might affect prices.

Mr. TINCHER. I quoted your previous statement to this committee.

Mr. WELLS. And that is explained in that record.

Mr. JONES. Do not people generally speculate more on the future market when wheat is going up?

Mr. WELLS. Yes.

Mr. JONES. And is not the falling off in trading on your exchanges in large measure attributable, probably, to the fact that in the aftermath of the war there has been a continuous downward tendency in all products, wheat and other products, and therefore the man who is inclined to speculate, the outsider, who furnishes a good part of the market, is not inclined to speculate as much?

Mr. WELLS. That is true to a great extent, but at the same time we have not had the buying power which you would expect, even under the conditions which existed.

Mr. JONES. You have not had enough bears to take care of the production?

Mr. WELLS. We have not had enough bulls to take care of the hedges that were offered.

Mr. JONES. But that would naturally follow from a gradually sagging market?

Mr. WELLS. That is more marked in a sagging market; yes.

Now, gentlemen, on section 4 I have no particular comments to make.

In section 5 we come to subdivision (a), on page 6, line 8. I object most strenuously to the words added at the end of that subdivision, "approved by the Secretary of Agriculture for the purpose." Mr. Morrill tried to justify the addition of those words the other day by citing the case of a tiny little market down in the Southeast somewhere that applied for designation as a contract market, which they would have to refuse because of the fact that they had no satisfactory weighing and inspection facilities.

Now, that is not the only requirement. If the market were of the character described by Mr. Morrill, it would be precluded from designation by the balance of that definition:

"Where cash grain of the kind specified in the contracts of sale of grain for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the grain and the differences in value between the various grades of such grain."

Now, a market such as Mr. Morrill described could not receive cash grain in sufficient volume to reflect these various conditions required for designation. Refusal does not have to be based solely on weighing and inspection service. Furthermore, if it received a sufficient amount of grain to reflect those various conditions, then it must of necessity have officially recognized inspection and weighing.

Mr. TINCHER. But you will concede, of course, that a place to be designated as a contract market should have sufficient facilities for weighing and grading?

Mr. WELLS. Absolutely; there is no question about it, and they should have been recognized. That means that they must be recognized by the producer and by the trade at large, who have used them and are satisfied.

Mr. TINCHER. Of course, you understand that in this bill there is no provision or suggestion that the Government would do any weighing?

Mr. WELLS. No; but they may do it just the same.

Mr. TINCHER. No. The Secretary must approve of the weighing and grading facilities of the place before he can designate it as a contract market. Why is there any objection to that?

Mr. WELLS. There is great objection, because we have established in Minnesota a weighing system second to none in the world. We have an inspection system which, prior to the Federal standard, was acknowledged all over the world.

Mr. TINCHER. Do you think the Secretary of Agriculture would be justified, or would contemplate for a moment saying that that was not a sufficient weighing and grading system?

Mr. WELLS. I do not say that he would; no. But, I say, why grant him the power to upset a well-organized, well-known system?

Mr. TINCHER. Well, to whom would you grant it? Somebody must have it, because, as you say, we must have sufficient weighing and grading. Somebody must have that power. Whom would you give that power to?

Mr. WELLS. That power is in the States now.

Mr. TINCHER. Well, but your State grades my wheat if I ship it in from another State. I ought not to have to rely on that. Whom would you rather leave it to—44 States—to see that this weighing and grading is all right or to the Secretary of Agriculture?

Mr. MCLAUGHLIN of Michigan. Mr. Wells, it seems to me you would not give the Secretary of Agriculture authority even to approve this system?

Mr. WELLS. I would not make its acceptance subject to the approval of the Secretary of Agriculture. I do not think it is a safe thing to do, Mr. McLaughlin. You are having a dispute now under the stockyards act.

Mr. TINCHER. Not now.

Mr. WELLS. Well, you were.

Mr. TINCHER. Oh, they did have a law up in Minnesota—and since you have mentioned it I will cite it as a reason why the Secretary of Agriculture should have that power. They had a law up in Minnesota under which they would take my cattle, if I shipped them from Kansas up there, and weigh them and charge me for it, and pay the State officers a salary for it, when the cattle were in interstate commerce. Of course, the court knocked the law out the first time they had a chance at it. If you offer that as a reason why the Secretary of Agriculture should not have that power, I think most of the members of the committee would consider it a good argument for it.

Mr. WELLS. I will tell you where I am selfishly interested in this. In the first place, I do not believe in centralizing that power, so to speak, in a department. I have been in a department, and I know how they are constantly reaching out for more and more. That is a fundamental objection.

On the other hand, the elevators within the State of Minnesota are under the control of the railroad and warehouse commission. The weighing in those elevators is under the control of the railroad and warehouse commission. Now, I, as an operator, do not want to be placed in a position where the Federal Government and the State government can come in conflict and leave me up in the air, and I have got to follow the railroad and warehouse commission in everything I do.

Mr. TINCHER. I do not contemplate any trouble for you along that line, but I will say this, that the provision in the stockyards act, regardless of the fact that the packers, with the best legal representatives in the world, were here telling us that we would have rack and ruin if we passed that law—I believe that provision has produced better feeling in the trade generally and has done more to induce men to go back into the live-stock producing business than anything that has happened in Congress for a long time.

Mr. WELLS. I know nothing about that, but you can see my position as a grain man in Minnesota.

Mr. RAINEY. I will have to disagree with Mr. Tincher as to that—not that particular law, because the bill that this committee finally reported out adjusted the differences in a way that will probably be helpful. But there were some bills here that would probably absolutely destroy the live-stock industry if they had become law.

Mr. TINCHER. Oh, they would never get through Congress.

Mr. WELLS. In the bill as it stood, in order to receive designation as a contract market a market had to have officially recognized weighing and inspection service, and there was ample protection so far as that service was concerned, because unless the Secretary said, after investigation, "I find that to be an officially recognized weighing and inspection service," he did not have to grant the designation. But I do not believe in putting into a bill of this sort any direct, explicit authority which is not required, on the theory that it might be required some time. That need can be met when it arises.

Then we come to subsection (b), which provides for the making and filing of reports. There is no great difference of opinion except as to this. The reasons which Mr. Gates advanced yesterday for having the reports submitted directly by the members were entirely valid. In other words, the executive officers of these boards of trade are in the trade themselves, and it is not fair that they should have access to information or the possibility of access to information which would be detrimental to their competitors in the business.

Now, after the passage of the futures trading act the representatives of the various boards of trade met with the Solicitor of the Department of Agricul-

ture, and we agreed upon rules which it would be necessary for the boards to pass in order to receive their designation. I will submit here, if you will permit, a copy of a rule which was agreed upon and which was adopted by all of the contract markets as a requisite for admission and designation.

Mr. CLARKE. Just a moment. Who was it that agreed on this?

Mr. WELLS. The Secretary of Agriculture and the representatives of the markets applying for designation.

Now, the section of the rule which refers to section 5, subsection (b) in this act reads as follows. This is a rule that the exchange was required to pass:

"SECTION 1. Every member shall make or file such report and keep such record of his transactions as he is required to make, file, or keep by subclause (b) of section 5 of the act of Congress known as the futures trading act; and if he shall fail to do so he shall be suspended by the board of directors from all privileges of membership until he shall comply with the said provisions of said act."

I think that this indicates what the Secretary wanted and what he was willing to accept. Therefore I would suggest that in section 5, subsection (b), line 18, the words "by the board" be eliminated and, on line 19, the words "as the Secretary of Agriculture may direct" be also eliminated. Then, on page 7, line 4, I would suggest that the words "the board or" be eliminated, and at the end of the same line and continuing on line 5 the words "as the Secretary of Agriculture may direct" be eliminated.

If that were done that subsection would conform with the rule which the Secretary of Agriculture approved and which his solicitor drafted, and it would throw the responsibility for the keeping of the records and the making of reports upon the members of the boards rather than upon the boards themselves.

Mr. JONES. You can simply eliminate the language "as the Secretary of Agriculture may direct." It would hardly be necessary to eliminate the other.

Mr. WELLS. "By the board."

Mr. TINCHER. How would the Secretary of Agriculture get them to agree to that rule if he could not direct them?

Mr. WELLS. He directs the form of keeping the record.

Mr. CLARKE. So that the records of all transactions on any of these boards of trade would be forwarded to the Secretary of Agriculture direct?

Mr. WELLS. Or the Department of Justice; yes. It makes the section read this way, if I may read it:

"(b) When the governing board thereof provides for the making and filing by any member thereof of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the members of the board of trade, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice."

That simply throws the burden on the governing body to compel the member to furnish such reports as the Secretary may direct——

Mr. JONES. If you eliminate the reference to the board, so as to have the members make the reports, what is the objection to leaving in "as the Secretary of Agriculture may direct"?

Mr. WELLS. Well, it does not make any difference. That may be left in.

Mr. TINCHER. But the Secretary of Agriculture does not want to have to look to each individual member; he wants to hold the board responsible to him. I agree with you to this extent, that we ought to be able to do it and still obviate the necessity of a man submitting himself to the possibility of the board examining into the details of his transactions.

Mr. WELLS. The best answer to that is this. Here is the rule which the Secretary accepted and which was drafted by his solicitor. That answered his requirements, and it was passed by the various boards before they were designated as contract markets.

Mr. TINCHER. Of course, it has been discovered since then that he does want in that report the names of the parties.

Mr. WELLS. I have no objection to that. If I may, I will submit this rule as indicating what was accomplished.

(The rule referred to by Mr. Wells is here printed in full, as follows:)

"SECTION 1. Every member shall make or file such report and keep such record of his transactions as he is required to make, file, or keep, by subclause (b) of section 5 of the act of Congress known as the future trading act; and if he shall fail to do so he shall be suspended by the board of directors from all privileges of membership until he shall comply with the said provisions of said act.

"SEC. 2. No member shall disseminate any false, misleading, or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of commodities, and any member who shall knowingly or carelessly disseminate such report shall be suspended by the board of directors from all privileges of membership for such period as the gravity of the offense committed may warrant.

"SEC. 3. So member shall attempt to manipulate prices of commodities, nor corner or attempt to corner any grain, and any member who shall knowingly or intentionally violate the provisions of this section shall be suspended by the board of directors from all privileges of membership for such period as the gravity of the offense committed may warrant.

"SEC. 4. The board of directors is authorized to take such other steps as may be necessary or advisable to make effective subdivisions (c) and (d) of section 5 of the future trading act.

"SEC. 5. Any member who, under subclause (b) of section 6 of said future trading act, shall be deprived of the privilege of trading in contract markets, shall be suspended from all privileges of trading on the exchange of this association for such period as may be specified in the order of the Secretary of Agriculture against such member.

"Any member who shall accept, or execute, an order from any person who shall have been deprived of the privilege of trading in contract markets shall be suspended from all privileges of membership in this association for such time as the directors, in their discretion, shall determine.

"SEC. 6. In order to comply with the act of Congress known as the future trading act, it is hereby provided that all rules of this association shall be construed with reference to, and shall be deemed subject to, and modified by, the provisions of said act."

Mr. WELLS. As far as subsection (c) is concerned——

Mr. MCLAUGHLIN of Michigan. You said, Mr. Wells, you were going to submit the rule?

Mr. WELLS. I have put it in the record, Mr. McLaughlin.

Mr. MCLAUGHLIN of Michigan. Do you approve that rule?

Mr. WELLS. That rule was passed by all of the markets designated as contract markets.

Mr. MCLAUGHLIN of Michigan. That is, it was satisfactory to them?

Mr. WELLS. It was drafted by the Solicitor of the Department of Agriculture in connection with representatives from the markets applying for designation.

Mr. MCLAUGHLIN of Michigan. And generally accepted by them?

Mr. WELLS. It was passed by all the markets.

Now, we come, on page 8, to section 5, subdivision (d). There is no question about the inclination of the boards and their desire to eliminate manipulation of prices, and you will notice in the rule which I submitted, and which was adopted, that they obligate themselves to do everything in their power to accomplish that end. You must, however, bear in mind that it is impossible always to prevent the misuse of facilities, no matter whether they are marketing facilities or any other; but the offender can, and under this contract, would be punished for such misuse.

I want to call your attention to one more thing, as regards the effect of this legislation upon manipulation. Anything that is done to narrow the trade on the markets facilitates manipulation. There is no question about that. It is a great deal easier to manipulate a narrow market up or down than it is a broad, liquid market, because the manipulator does not meet with the opposition that he would where there was a great volume of trade. I think you should bear that in mind in connection with any restrictions which you place upon future trading which would tend to limit or reduce the volume of trading.

Then we come to the much-discussed subsection (e), relative to cooperative exchanges.

I wish you would bear in mind that the objection to cooperative exchanges is not an objection to the organizations as organizations. It is simply an objection based on the fact that their method of doing business will make it impossible to maintain a uniform commission rule. You can go into any organization in the country where commission rules exist, and you will find that where there has been a breaking down of a uniform commission rule the results have been entirely unsatisfactory. Senator Kendrick told us during the hearings before the Senate committee that at one time the live-stock exchanges got away from the uniform commission rule, and as a result there was a cutting of commissions to such an extent that the commission houses lost their financial stability, and shippers entrusting their cattle to them often had to face a loss; and, furthermore, that it led to the corruption of dealers in the country, because commission merchants would go and make them offers, either of cash or of a proportion of the commission, in order to influence shipments. It is the breaking down of the commission rule that we object to, and not the admission of any class of organizations. We would be very glad, and have repeatedly offered, to admit to membership duly qualified representatives of cooperative organizations, provided they were willing to abide by all the rules and regulations affecting other members.

Mr. KINCHELOE. Where do they violate the commission rule except in the distribution of their profits?

Mr. WELLS. They do not; that is the whole basis of it.

Mr. KINCHELOE. Well, why did they disarrange and disorganize it, as Senator Kendrick indicated, in the stockyards business?

Mr. WELLS. For the simple reason that these cooperative societies, most of them, do business for people other than their members.

Mr. KINCHELOE. I can not see why that would destroy the equilibrium of your rule.

Mr. WELLS. Because you can not ask one man to maintain a fixed commission and allow another man to allow to his customer a part of that commission.

Mr. PURNELL. Mr. Chairman, I have an engagement before the Senate committee, and I desire the privilege of proceeding out of order for just two minutes.

We have one more day under the rule, and some of those who favored reporting out the sugar claim of Mr. De Ronde felt that he did not have a day in court, and some of us who believed the claim was meritorious and that he ought to have an opportunity to be heard by the House feel that he should have that opportunity on this next day, for at least an hour, or 30 minutes anyway. I want to bring that matter to the attention of the committee.

I move that on Thursday—if that is the day we are to have—the chairman be instructed to call up this claim, with the understanding that there shall not be more than one hour of general debate.

(After brief informal discussion the question was called for, and the motion, having been duly seconded, was put and was declared lost. A roll call was called for, and the clerk of the committee announced that the vote stood: Ayes 5, noes 8. So the motion was lost.)

Mr. KINCHELOE. Before the passage of the act would these cooperative organizations rebate the commissions in the course of the transaction——

Mr. WELLS. No; settlement was made afterwards in proportion to the volume of each man's shipment.

Mr. KINCHELOE. The thing I can not understand is this. What business is it of any other member of the exchange if I go in there and clean up some money and make a profit and put it in my pocket, whether I give it to you or keep it myself?

Mr. WELLS. That is not the question. That is not the way it works.

Mr. KINCHELOE. How does it work? You say they do not distribute it until after the profits are all made and the deal is closed?

Mr. WELLS. They solicit and obtain business on the basis of returning the shipper a portion of the commission which he pays, and that is unfair competition, and it has always led to a disastrous breakdown of all markets where it has been tried.

Mr. MCLAUGHLIN of Michigan. Most of these people with whom business of this kind is done join in an association and become parts of an entity, and that entity does business and distributes its profits among those who compose the association.

Mr. WELLS. In proportion to the business which they furnished. Consequently, it is a rebating of the commission.

Mr. MCLAUGHLIN of Michigan. We have often discussed that here, and I have got the impression that that was not the principal objection on the part of the exchanges to the admission of these cooperative associations.

Mr. WELLS. Were it not for that method of doing business, there is no rule on any exchanges' books that would exclude them.

Mr. MCLAUGHLIN of Michigan. And I understood that they failed in some other way to comply with the rules of the exchange.

Mr. WELLS. That is the only one they have refused to accept, and they do not all refuse to accept that.

Mr. MCLAUGHLIN of Michigan. I do not think I am wrong in saying that some of you gentlemen who have not been favorable to the admission of these cooperative associations have said that you were not particularly objecting to the return of profits. I can not tell now what the objections were that were raised, but it seems to me there were other objections than that.

Mr. WELLS. I think not, Mr. McLaughlin.

Mr. VOIGT. There was one chief objection raised, and that was that these people distributed their profits back to the people who run the business.

Mr. WELLS. Mr. Young testified in the Senate that over 50 per cent of the business done by the Equity Cooperative Exchange was done for outsiders, for persons outside of their own membership.

Mr. TINCHER. Of course, you would have a rule which would prevent them from distributing profits to such persons.

Mr. WELLS. Yes; but there is a very easy subterfuge. You can not say what their membership fees shall be, and they can charge a man a dollar for membership, if they wish.

But I will say this, gentlemen, that I think the farmers' organizations, working with the grain exchanges and the committee to which Mr. Gates referred yesterday, are going to work out some solution which will be satisfactory.

It may be interesting to you to know this. The Northwest Wheat Growers' Associated, which is a farmers' organization, handling grain largely, on the Pacific Coast, has recently conferred with the chamber of commerce in Minneapolis relative to membership, and the terms were laid down upon which they could secure membership. That organization is purely a sales agency for its members. They put all of their wheat in a pool and market it, so that the question of a commission is not involved at all. They were told that, being a nonstock company and nonprofit company, they would have to furnish some guaranty to insure the enforcement of their contracts, the contracts into which they entered, and they said they were perfectly willing to put up Liberty bonds or cash or a fidelity bond of such amount as we might require, and so they are coming into the exchange.

Mr. MCLAUGHLIN of Michigan. You say they are to be admitted, or the action that has been taken would indicate they are to be admitted, notwithstanding the fact that they give back to their members a portion of the profits?

Mr. WELLS. It is not that. Mr. McLaughlin; they are purely a sales agency. All the grain they handle belongs to their members, and they handle it at cost. There is no commission charged at all. The members pay their pro rata share of the expense and divide up what is left. The grain all belongs to the organization that sells it.

Mr. TINCHER. Do you believe that a man who was not a member of an organization of that kind would ship wheat to them simply to get the pro rata share of the profits?

Mr. WELLS. I can remember the days when they had no commission rule in Duluth, and I know that a quarter of a cent or an eighth of a cent a bushel would influence a shipper to go from one commission house to another.

Mr. TINCHER. It would not influence me to do that.

Mr. WELLS. I know; and it would not influence me, either.

The CHAIRMAN. Their representatives are paid a salary, are they?

Mr. WELLS. These Northwest wheat growers?

The CHAIRMAN. I mean the cooperative societies?

Mr. WELLS. Oh, yes.

The CHAIRMAN. Then the profit they make belongs to the association, does it not?

Mr. WELLS. It belongs to the sales agency, and they distribute it according to the business furnished by the different shippers.

The CHAIRMAN. If it is a cooperative association the profits belong to the association?

Mr. WELLS. Yes.

The CHAIRMAN. They are entitled to the profits, aren't they?

Mr. WELLS. But that is not the way they work.

The CHAIRMAN. The profits belong to the stockholders of the association, of course?

Mr. WELLS. They have no stockholders; that is the point. If they had stockholders and declared dividends like any other corporation, it would be different. But the commission is rebated on the basis of the business furnished.

The CHAIRMAN. It is their money; it is their profit.

Mr. WELLS. If only the actual producers who raised the grain were shipping to that agency, then it would not be such a serious matter, but they solicit business outside of their membership on the same basis.

Mr. KINCHELOE. From nonmembers?

Mr. WELLS. Oh, yes; nonmembers as well.

The CHAIRMAN. Every shipper is a member, is he not?

Mr. WELLS. No.

The CHAIRMAN. Is not every customer a member?

Mr. WELLS. No.

The CHAIRMAN. What is the requirement for membership? It is composed of shippers, is it not?

Mr. WELLS. Oh, no. They have to join the association, and they pay a certain fee for joining it.

The CHAIRMAN. They have members who pay fees, and they have other members that do not pay fees?

Mr. CLARKE. I think the test of membership is the fact that they are producers, and all of their product goes into the pool.

Mr. MCLAUGHLIN of Michigan. My impression is that if they do business for outsiders they ought to charge the regular commissions, exactly the same as other commission merchants charge. They ought not to do business with outsiders on the same basis as they do business with the members.

Mr. CLAGUE. In Minnesota I belong to at least three of these cooperative societies. We buy not to exceed four shares. The four shares will be $40, we will say, or they may be $25 shares. Then we are first entitled to take out 8 per cent in dividends. I think all of our societies provide for that. Then the profits over that are divided just the same amongst all members and nonmembers. The difference is that the nonmembers do not get the 8 per cent. The members get that 8 per cent on our stock, you see. We have to do that in order to get members. Then the nonmembers get their share of the profits, and that is a help to the stockholders. We get our 8 per cent in addition to that. That pays for our stock, and is necessary in order to keep up our organization.

Mr. MCLAUGHLIN of Michigan. It seems to me that that amounts to a splitting of commissions.

Mr. CLAGUE. That is true; but it is a mighty good thing for the farmer organizations just the same.

Mr. WELLS. There is no question at all that any of these organizations, if they wished to incorporate a stock company, could gain admission upon furnishing a suitable representative, to any board of trade, and I think the whole thing is being worked out.

Of course, it is rather difficult for a layman to find any direct connection between special privileges to be granted to members of an exchange and interstate commerce. I will admit I do not quite see where this section (e) belongs in this bill.

Mr. KINCHELOE. It was in the other bill.

Mr. WELLS. Yes; and it was declared unconstitutional; but this is under the interstate commerce act.

Mr. TINCHER. I can tell you why it bears a relation to interstate commerce. The Chicago Exchange is either a hindrance or a help to interstate commerce, and they are engaged in a business in the public interest. That being true, the question of who can be a member of that exchange is certainly a matter that is related to interstate commerce. Whether they can bar a certain class of people from membership in that great institution is certainly related to interstate commerce. I do not think there would be any question about that.

Mr. WELLS. I was speaking as a layman and without any definite legal advice. But our counsel did advise us that this section had no more place in this bill than it had in a taxation measure.

We now reach subsection (f), section 5, which is entirely new, and which I would say is more far-reaching in its effect upon future trading than anything that has been proposed.

A question arose yesterday as to the interpretation placed on this subsection by Mr. Gates, and I think Mr. Tincher felt that Mr. Gates misunderstood it. I requested a copy of the bill from the Secretary of Agriculture, and he forwarded to me a copy, together with comments, and in the comment on subdivision (f) of Section 5 this is stated:

"Subdivision (f) is a new subdivision, not found in the preceding statute, designed to give the Secretary of Agriculture power to deal with the question of grades that may be delivered on contract, premiums and discounts, inadequate elevator capacity, and any other conditions that may have similar importance in relation to the prices and executions of contracts."

That is a pretty sweeping interpretation of that subsection, but that shows what is in the mind of the man who drafted it, apparently, because I assume that these comments came from the solicitor of the department. The whole thing comes to me from the Secretary's office.

Now, it may be stated that in the cotton futures act, which has worked fairly well, I understand, certain grades are specified as being deliverable on contract and a certain system is set up for the determination of the discounts or premiums at which other grades may be applied on contracts. But cotton and wheat are entirely different, and they are growing more different every day so far as determining the intrinsic value of the two commodities are concerned.

Take the spring-wheat crop alone. The use of spring wheat is principally for domestic milling purposes. A very small proportion of the crop is exported. Now, not enough spring wheat is raised in the United States to-day to satisfy what used to be our domestic requirements, and the sustaining power in the spring-wheat market, so far as buying is concerned, is the miller. The spring wheat is ground there in the Northwest, both in the country and in the cities, or is shipped down the Lakes and ground at Buffalo and eastern mills. Only a very small proportion of the entire crop goes abroad; the spring wheat for export is now furnished by the Canadian Northwest.

Now, in order to get the buyer into the market and in order to make it safe for the hedger to protect himself by sales in the market the question of contract grades and premiums and discounts has to be a matter of compromise. If you were to consider the buyer alone you would make only the highest grade and the highest quality delivered on the contract. But that would immediately make it unsafe for the hedger, because that grade constitutes only a fractional part of the entire crop, and the hedger would be in danger of running into a congested condition all the while. So the question of grades deliverable on future contracts and the premiums and discounts for grades other than the contract grades is one which has to be determined by compromise, as I say, between the commercial interests involved.

Now, if you arbitrarily, by any department organization, attempt to fix those grades or the premiums and discounts, you are immediately going to narrow your market. The miller will not know what he is going to get on his contract, and consequently will not, to the extent he has done in the past, supply his requirements for future use by the purchase of future contracts, but will instead endeavor to buy up cash wheat. He will then become a seller of future contracts until such time as he makes flour sales and buys back his future contracts, leaving his wheat free for milling.

Cotton is a very different thing. There are certain grades of cotton and they have certain relative values. To a greater extent every year, and every day in the year, wheat is bought on sample rather than on grade. The grades are simply a general classification. There is a variation of 5, 10, or 15 cents, sometimes, in the same grade of wheat, because of the difference in gluten content, from the miller's point of view, of wheat from different localities. In my judgment, it would be absolutely impossible for the Secretary of Agriculture or his technical men in his laboratories to establish grades deliverable on contracts, or to establish premiums and discounts which would not have the effect of narrowing the markets very, very materially. And as I pointed out a few minutes ago, anything you do to narrow the markets increases the ease of manipulation, which is the thing you are trying to defeat. The Chicago market, for instance, has a wide variety of wheat deliverable, different grade of different varieties, because of the fact that it has tributary to it a large number of varieties of different wheats.

We know from personal experience that we can not rely on technical laboratory men to adjust these matters. There have been reports made apparently demonstrating, let us say, that No. 3 wheat was worth for milling purposes within 2 or 3 cents a bushel of No. 1 wheat. But in actual practice this relative value would not work out, and if this privilege of determining relative values rested with the Department of Agriculture the uncertainty surrounding premiums and discounts for grades deliverable on contracts and the arbitrary methods employed to determine those premiums and discounts would, in my judgment, absolutely strike at the basis of all future trading.

Mr. TINCHER. Now, Mr. Wells, the form of contract now rests with the board of trade. The form of that contract is not prepared by the buyer or seller; it is not as if you would sit down and buy a piece of property. It is a form of contract that is worked out, with the things you have mentioned taken into consideration, by a scientific body of men, known as the board of trade.

Mr. WELLS. Pardon me, but the form of contract is worked out by the buyer and seller, because the directors of the various boards of trade represent the different classes at interest.

Mr. TINCHER. But here is the point I am getting at: In this subject, where there is a national interest and where we have national grades and a national grading system——

Mr. WELLS. We also have State grades.

Mr. TINCHER. What objection would there be to having the Secretary consulted about the form of that contract? Your argument is that the Secretary of Agriculture, who is supposed to be at the head of the department and to have the interest of the producer at heart and to be interested in producing food for this country and encouraging production, would narrow the thing down so that it would be hurtful?

Mr. WELLS. No.

Mr. TINCHER. Do you not think that that would provide a definite, official head for it, which would be helpful to the trade?

Mr. WELLS. No. My objection is that the questions which are now settled on a commercial basis would be settled on a technical laboratory basis, and it does not work out. Those things never work out.

Mr. TINCHER. There was some trouble, was there not, about the closing up of the May option contracts?

Mr. WELLS. There was not any trouble. Wheat had to be brought from unusual places, because the man who sold it did not have it there.

To show you how these technical things work out, Mr. Tincher, let me say this: I was talking with a man from Kansas City the other day, speaking about Federal grading. He said, "Well, they have got it to a point now where a car of wheat will come in, and we will say it was cut with a header and lay on the ground and became stained. We never call that anything but stained, and we would sell that to the mills, and they would never pay any attention to it. But now a technical laboratory man takes that stained wheat and holds it up to a certain kind of light, and then holds it up to another kind of light, and he says that is bran burnt. What does the miller do then? He backs right away from it, and whereas he used to pay a fair price for that, to-day he says, 'That is burnt wheat, and I won't take it except at considerable discount.'"

Mr. TINCHER. Is that the fellow that works for the Government that does that?

Mr. WELLS. Yes; the technical man.

Mr. TINCHER. Well, he ought to be shot at sunrise.

Mr. WELLS. But that is the whole tendency of the laboratory determination of these things. Perhaps from a scientific standpoint that wheat is burnt; I don't know; but it never made any trouble until we had these highly trained technical men.

Mr. TINCHER. It is hard for me to conceive that a department of the Government is doing something that will work injury to the producer of grain.

Mr. WELLS. You write to Lonsdale about it. He was telling me about the conditions they had gotten into down there.

Mr. KINCHELOE. Did that affect the quality of the flour at all?

Mr. WELLS. No; it did not in the past.

Mr. JONES. As a matter of fact, Mr. Wells, your board does change the form of contract occasionally, does it not?

Mr. WELLS. Yes; but this puts it in the power of the Secretary, according to his own interpretation of this section.

Mr. JONES. You are afraid that some technical man will come in without actual knowledge of the grain business?

Mr. WELLS. I can only judge from what they have done elsewhere. For instance, there is a year when we in the Northwest only have, we will say, 25 per cent of No. 1 northern wheat, and the balance of the crop is largely No. 3 wheat. Now, the technical man says, "We have tested this wheat in our test mill, this No. 3 wheat, and it is worth within 4 cents a bushel of No. 1 northern." So you are directed to fix your discount on your No. 1 northern contract for delivery of No. 3 wheat at 4 cents a bushel discount.

Now, our millers know—they have practical laboratories, and they have gone further than the Government, and every big baker has his laboratory. Our millers know that flour made from that wheat will not sell at all. It is not a matter of 4 cents discount, it may not be worth within 14 cents of No. 1 northern, but the technical man in the laboratory in Washington says, "My tests show that this wheat is worth 4 cents a bushel less than No. 1 northern."

Now, what is going to happen in a situation like that? Do you suppose the miller will ever go in and buy a future contract? Instead of being a buyer of futures he will select his wheat and put it away, and he will be a seller of futures as a hedge. He will remove his buying power from the futures market, and when he sells his flour he will buy back his future contract.

You can not run those things technically. It has to be a matter of commercial experience and practice. The interests of the buyer and seller are both at stake, and no contract that is unfair to either buyer or seller will enjoy any popularity.

Mr. Tincher speaks a great deal about the form of the contract. It is not a question of the form of the contract; the question of form cuts very little figure. It is a question of what is deliverable on the contract and what premiums or what discounts are to be enforced on grades other than contract grades.

Mr. TINCHER. I think that the question of the grades deliverable under the contract, as shown by the form of the contract entered into, might become a very material proposition, as to whether the traders on the exchange could manipulate the price of wheat.

Mr. WELLS. They could if you restricted it to one grade that was just a very small proportion of the crop.

Mr. TINCHER. Now, absolutely following your suggestion there, getting back to the basis of this proposition, the question comes up, whose interests are at stake, and who should be consulted in deciding it? The producer's and the buyer's interests are looked after by the exchanges, and personally I am frank to say to you that I agree with the Department of Agriculture that this is a subject in which they should have some rights; that is, not for the purpose of hindering or hurting or finding something in the laboratory, but for the purpose of preventing manipulation. That is one of the objects of this bill.

Mr. WELLS. For the sake of argument, if it were possible to have a trade in a future that represented only 10 per cent of the crop, that would mean that that future would be all the time congested and the price would be way up. That would theoretically help the producer, but it would also immediately kill all futures. That 10 per cent would have a fictitious value, because it would be the only thing that could satisfy the contract. And that only constitutes 10 per cent of the producer's crop. Those things can not be fixed by any department, in my judgment. The case of cotton, where you can determine the value, is another thing. You can not determine the value of wheat. All No. 1 northern wheat is not No. 1 northern wheat, except in name. It all comes up to certain Government specifications, yes, but the chemical qualities of that wheat, its flour-producing qualities, show a variation in value of 5 or 10 cents a bushel. Those things have to be determined commercially.

And let me tell you again that the question of discounts is a very material question, for this reason: Suppose the Government said that No. 3 wheat should be delivered on No. 1 northern contracts at 10 cents discount. We will say the movement of the No. 3 wheat crop demonstrated that that grade had commercially a value within 5 cents of No. 1 northern. Do you suppose any of it would ever be delivered on a future contract? Not at all. That wheat would be sold, and the man would buy back his future contract. It would not mean that he would have to deliver it at 10 cents discount.

This bill puts it absolutely in the hands of the Secretary of Agriculture to dominate the whole marketing system of the country, and I do not believe there is any living man of sufficient intelligence to have that power placed in his hands. It is a power that is not given to any other department head in any form that I know of.

Mr. KINCHELOE. Have you ever had any trouble in the past about the contracts?

Mr. WELLS. Yes; and we have changed them during my career in the business.

Mr. KINCHELOE. The reason I ask that is this: I imagine that probably the Secretary had some reason for putting that in there.

Mr. WELLS. I believe that was put in on the basis of the cotton futures act, and the cotton, as I have tried to explain to you, is an entirely different thing from wheat. You can buy certain grades of cotton, and you know they are worth certain amounts of money. You can buy certain grades of wheat, and there will be a range of 15 cents a bushel in that same grade. Mr. Haugen spoke of that to-day. The two are not parallel at all.

Mr. TINCHER. Mr. Haugen has always taken the position, at all the hearings I have ever attended, that there was more opportunity for the manipulation of the grain market through the exchanges fixing the grades deliverable upon contracts to suit themselves than in any other way, and some things have transpired recently with reference to the closing out of certain futures which have rather confirmed me in the same idea. I do not know just who prepared that memorandum there construing this bill——

Mr. WELLS. I suppose Mr. Morrill did; I do not know.

Mr. TINCHER. I hardly believe that the section, concerning which I did know something before it went in, would give them all the authority that some of the men in the department would want.

Mr. MCLAUGHLIN of Michigan. It gives them authority as to the form and conditions of the contract. I think myself that there are a lot of things that they propose to take notice of that they would not have control over under a proper construction of that subdivision (f). I know they reach out and take anything within reach.

Mr. WELLS. I am absolutely opposed to that whole subsection. I think that if you leave that in the bill you are simply signing the death warrant of efficient hedging markets. It has never been in any other bill, and is far more radical and far-reaching, without any excuse for being incorporated in a bill.

Mr. KINCHELOE. I thought you might have some suggestions about amending it.

Mr. WELLS. I have no suggestions for amendment. In my judgment, elimination of that action is the only thing that will preserve the integrity of the future markets.

Now, you may say the Secretary would not do this and he would not do that. What right have we to delegate to a man authority which puts him in a position where he may do this or may do that?

Mr. TINCHER. The Secretary would answer that by saying that you would say the exchanges would not do this and would not do that, and what right should they have to determine whether they would do this or do that?

Mr. WELLS. I can only say this: The exchanges are made up of two bodies whose interests are diametrically opposed, the buyer and the seller. The seller wants to get as much as he can, and the buyer wants to pay as little as he has to. Consequently you always have those conflicting interests working in opposition.

Mr. TINCHER. However, Mr. Wells, those men are speculators——

Mr. WELLS. What men are speculators?

Mr. TINCHER. The men you speak of.

Mr. WELLS. The buyer and seller? No; they are not speculators. I am not a speculator, and I am one of the biggest sellers there is in the Northwest.

Mr. TINCHER. You are not a producer?

Mr. WELLS. I am not a producer; no.

Mr. TINCHER. That is what I mean. It has been admitted before this committee, by men high in the profession or business, that their big profits come with big fluctuations.

Mr. WELLS. Speculators?

Mr. TINCHER. Well, the men who buy and sell the product.

Mr. WELLS. No; I beg your pardon. I make less money if I buy wheat for a dollar and it goes up to a dollar and a half than I would make if I bought wheat for a dollar and it went down to 50 cents, because I have to pay interest and insurance on a higher value of grain.

Mr. TINCHER. You mean to say that you would make less money if you bought wheat for a dollar and sold it for a dollar and a half than you would if you bought it for a dollar and sold it for 50 cents?

Mr. WELLS. Exactly what I say, because my investment in one case is in dollar and a half wheat and I pay interest and insurance on that, and in the other case it would be 50-cent wheat, and I would have a reduced cost of carrying.

Mr. KINCHELOE. Then how do you make any money at all?

Mr. WELLS. Because it goes down to 50 cents a bushel—I have all my wheat hedged, mind you. If I buy it for a dollar and it goes down to 50 cents I get back 50 cents from the clearing house. Consequently I have invested in my wheat only 50 cents a bushel, and it obviously costs less to carry.

Mr. KINCHELOE. The hedgers pay you back 50 cents a bushel, which would be profit?

Mr. WELLS. No; it would not be profit.

Mr. TINCHER. I can easily understand how you must be likely to look at this matter through different glasses than the producer if you say you can buy wheat at a dollar and sell it at 50 cents and make as much as if you sold it at a dollar and a half. I can understand how there might be a little difference in the viewpoint.

Mr. WELLS. I simply cite that to show you that there is no advantage to me in having the price go up. The saving would be a saving of interest on the investment.

Mr. KINCHELOE. This section here gives the Secretary of Agriculture pretty nearly plenary power, but at the same time do you not think from a close reading of it that a lot of things would have to happen before he would exercise that power? It says here, "When the governing board provides for making changes," etc., and only "after investigation and public hearing and communicated by him to such board, which substantially affects the price or prices of such contracts so as to render them hazardous or unreliable as hedges or price bases for transactions in interstate commerce," etc. It seems to me that before the Secretary could take any step in exercising that power there would have to be a pretty bad situation.

Mr. WELLS. You gentlemen assume in all this discussion that the Secretary of Agriculture is going to administer the act. He does not.

Mr. KINCHELOE. Of course, he does not personally.

Mr. WELLS. He does not administer the act at all, and a great many things are done that the Secretary does not know anything at all about until after they are done.

Mr. KINCHELOE. But he certainly would not let his chiefs act on an important proposition like that without reference to him.

Mr. WELLS. The Secretary told me himself that he was handicapped in working out these problems because he can not pay enough money to get good men. He has some very good men. Mr. Morrill is an excellent man, and there are other men of that type. The particular men to whom he has to delegate this authority are not men of broad experience. They can not be, or they could not be secured by the department.

Mr. KINCHELOE. We have helped him a little just recently on that.

Mr. WELLS. Now, there has been a lot said about what the Secretary of Agriculture wants and what he does not want. I have been very closely in contact with Mr. Wallace, whom I claim as a good friend, for a year or more, and have been here for several conferences on different subjects, agricultural and otherwise, and the Secretary has told me, and I think he would say the same thing to-day, that what he wants is the authority to secure first-hand information so that he may make a survey of the marketing situation and make suggestions either to the boards of trade or to Congress for such changes in that system as would be of benefit to the producer. Now, that is exactly what Secretary Wallace has said to me repeatedly, and that is what he is for.

Mr. KINCHELOE. Did the Secretary have reference to the grading of spring wheat in that conversation?

Mr. WELLS. No; this was not in connection with grading. It was in connection with the future trading act. Now, that is what the Secretary wants, and that is what I am personally strongly in favor of granting him. I think the position of the grain exchanges has been consistent from the start. We are not opposing reasonable, sane supervision which is not burdensome and does not entail additional expense in the marketing of grain. We are opposed to regulation which restricts markets and which will inevitably reduce their efficiency. I think if you would ask Secretary Wallace, he would tell you what he wants is information, and I am strongly in favor of every legitimate step being taken to grant him the information he wants first-hand.

Mr. KINCHELOE. Have you ever discussed this special section with him?

Mr. WELLS. No; I just received this bill before I left home from the Secretary and I have not had an opportunity to see him.

Mr. THOMPSON. Mr. Wells, are there any propositions except subsection (f) n this bill that you refer to?

Mr. WELLS. I have already filed my objections to portions of section 3, where I think certain wording is not warranted by the record or by the report submitted by the committee. I have objected, and have made recommendations as to certain changes in paragraph (b) in section 5, and have submitted as a basis for those recommendations the rule which was drafted by the Solicitor of the Department of Agriculture in connection with the grain exchanges. I have objected to the proviso in connection with subsection (e) of section 5.

Mr. MCLAUGHLIN of Michigan. Mr. Wells, you told of what you conceive to be the evil of that method of doing business, and it was the distribution among farmers, buyers, or sellers or whoever they are, who are not members.

Mr. WELLS. I think that is a great evil.

Mr. MCLAUGHLIN of Michigan. This proviso applies to the distribution of excess earnings among the bona fide members of any such cooperative association.

Mr. WELLS. Very true; but there is no definition of what a cooperative association is or what constitutes membership. If I want to run a cooperative association, I can charge a dollar apiece for membership, and I could distribute my earnings then to those people. Their investment would be $1 and they might save one-fourth of a cent a bushel by having their marketing done through me, which I claim is unfair competition and would break down the commission rule. I am not a commission merchant, Mr. McLaughlin, and it does not affect me one particle, but I do know what happens in markets where the commission rule is broken down. I have seen that happen in the Northwest.

Mr. KINCHELOE. I do not know whether I understood you a while ago or not, but I understood you to say that this farmers organization that you spoke of was now a member of this board.

Mr. WELLS. The Northwest Wheat Growers Association?

Mr. KINCHELOE. Yes.

Mr. WELLS. They have been negotiating for membership and are entirely satisfied with the terms upon which they can secure membership.

Mr. KINCHELOE. If they go into your association, they are the owners of the wheat, and the wheat is pooled, of course, for the purpose of getting a better price.

Mr. WELLS. Yes; that is what they hope to do.

Mr. KINCHELOE. In other words, it might be that the commission is reflected in the price of the wheat by reason of their going into it.

Mr. WELLS. Yes, sir.

Mr. KINCHELOE. Will they handle any wheat for any other farmers who are not members of that organization?

Mr. WELLS. No.

Mr. KINCHELOE. That will be one of your rules?

Mr. WELLS. No; we do not have to have a rule about that because the title to the wheat passes and they will advance to the producer an arbitrary amount, and then they divide up the proceeds after the grain is sold.

Mr. KINCHELOE. And that applies to only the members of that organization?

Mr. WELLS. Yes, sir.

Now, the Minneapolis Chamber of Commerce has other cooperative and farmers' organizations among its membership. There is the Farmers Grain Co., of Devils Lake, N. Dak., which has been a member since 1900; the Saskatchewan Cooperative Elevator Co. of Canada, which is the biggest cooperative grain company in the world and which has been a member since June, 1917; and the Farmers' Elevator Commission Co., which is a commission company formed by a number of country farmers' elevators, and they have been members since 1919.

Mr. KINCHELOE. Has the farm bureau ever made application for membership?

Mr. WELLS. No.

Mr. TINCHER. Mr. Chairman, I desire to move at this time that the chairman of the committee, inasmuch as we are going to close the hearings the first of the week, be requested to ask for the consideration of this bill in such form as we may amend it and report it out on Thursday.

Mr. RAINEY. Mr. Chairman, I do not see the need of such great rush on this bill. Heretofore, after the consideration of a bill, we have always appointed

a subcommittee to redraft and consider the bill and then send it back to the full committee so that we might consider it at length and make whatever amendments we deemed advisable, and I think from the testimony of Mr. Wells that this is a matter that demands considerable attention.

Mr. TINCHER. If we do not get the bill ready by that time, of course, then we will have to switch to something else.

Mr. MCLAUGHLIN of Michigan. I have not any choice among the different bills, but this is a matter of great importance and I would like to have it thoroughly studied in the committee, whether it is to come up Thursday or at any other time.

Mr. CLAGUE. Can we not leave that open until we hear Mr. Jacobson?

Mr. TINCHER. All right; I will withdraw my motion until we hear Mr. Jacobson, but I am going to use every effort I can to get the bill up as quickly as possible.

STATEMENT OF HON. CARL R. CHINDBLOM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS.

Mr. CHINDBLOM. Mr. Chairman, will you permit me to make a little statement for the record?

There are other gentlemen here from Chicago who are intensely interested in this legislation. They have not taken up the time of the committee, but I would like the record to show that they have come here and have attended the hearings and they join in the views which have been expressed by Mr. Gates and Mr. Wells. I refer to Mr. Henry A. Rumsey, one of the directors of the Chicago Board of Trade and for many years mayor of the city of Lake Forest, in the district which it is my honor to represent; and Mr. L. L. Winters, also of Chicago, who is also a director of the Chicago Board of Trade.

Mr. KINCHELOE. I think that is perfectly proper, and I would like to ask whether they have any statement of their own they would like to put in the record.

Mr. WINTERS. We have no statement to make except we represent the Board of Trade officially and we subscribe to what has been said here.

Mr. KINCHELOE. I would be willing to give you the further courtesy of filing any statement you desired to submit.

Mr. MCLAUGHLIN of Michigan. If you have anything additional to say that has not been covered, we will be pleased to have your statement.

Mr. WINTERS. You gentlemen have been very patient and Mr. Wells and Mr. Gates have covered the situation very thoroughly, we think, and there is nothing we could add to their statement.

Mr. CHINDBLOM. I would like to introduce Mr. Rumsey to the committee, if I may.

Mr. MCLAUGHLIN of Michigan. We will be glad to have any statement you have to make for the record.

Mr. RUMSEY. We have no additional statement to submit, but we would like to simply concur in the statements heretofore made by Mr. Gates and Mr. Wells.

(The committee thereupon adjourned until Monday, June 12, 1922, at 10 o'clock a. m.)

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Monday, June 12, 1922.

The committee met at 10 o'clock a. m., Hon. Gilbert N. Haugen (chairman) presiding.

There were present: Messrs. Haugen (chairman), McLaughlin of Michigan, Purnell, Riddick, Tincher, Williams, Thompson, Clague, Clarke, Jacoway, Rainey, Aswell, Kincheloe, and Jones.

There were also present: Messrs. Halvor Steenerson, Andrew J. Volstead, and Walter H. Newton, Representatives in Congress from the State of Minnesota.

The CHAIRMAN. The committee will come to order.

Mr. NEWTON. Mr. Chairman, I regret to advise the committee that Mr. Jacobson was unable to leave St. Paul so as to arrive here on Monday, and he was advised that somebody would have to be here on Monday, so he sent Mr. Quist, who is chief of the weighmasters, and one other gentleman to represent him.

They left Minneapolis on Saturday night so as to be here this morning. I have not heard from them, but Mr. Clague advised me when I got into the committee room this morning, that he had received a wire from those gentlemen that there is a washout some place on the road that has delayed them, and they will not be able to be here until to-morrow morning. Personally, I have not heard anything from them, but I left my office to come over here thinking that probably they had come direct to the committee room. But Mr. Clague advises me he has heard the reasons for their not being here, and that they will not be able to be here until to-morrow morning.

Mr. TINCHER. I do not think there is any controversy about this matter. Mr. Clague has a telegram that is explanatory.

Mr. CLAGUE. Mr. Chairman, Mr. Jacobson could not possibly come, but he wired me on Saturday, saying this [reading]:

Hon. FRANK CLAGUE,
Congressman, Washington:

Impossible for me to attend hearing Monday on account of my health, but Mr. Quist, State weighmaster, and Mr. Thompson, supervisor of scales, will be at your office Monday morning direct from the train, so keep the hearing open until they arrive. We are opposing the interference of grain weighing and nothing else; seems you ought to be able to strike that part of it out.

O. P. B. JACOBSON.

And then this morning, about 30 minutes ago, I got this telegram from Chicago [reading]:

CHICAGO, ILL.

Hon. FRANK CLAGUE,
House of Representatives, Washington, D. C.:

Washouts delayed us 12 hours; reach Washington, B. & O., 9 a. m. Tuesday; have statements to file with committee; urge amendment H. R. 11843 by striking out "approved by the Secretary of Agriculture for the purpose," as now in lines 15 and 16, paragraph (a), section 5.

P. P. QUIST.

Now, on page 6 of the bill, what we want and what our railroad and warehouse commission asks is that on line 13 on page 6 of the bill strike out all after the word "grain"—strike out all the balance of that section—and then substitute the language just the same as it is in the old bill; that is, in the former grain-future bill insert these words "and having recognized official weighing and inspection service."

Now, there has never been any complaint, so far as I have heard, in the Northwest or any place else where they have future trading in grain, about this weighing. We have official State weighing in Minnesota, and I think that is true of Chicago and all these future markets. Now, we are opposed and vitally opposed in having in this any way taken from the State and having it put in any way under the Secretary of Agriculture, so that the Secretary of Agriculture could come in and interfere with our State weighing. And all we ask is that the markets be approved by the Secretary of Agriculture and that we have our official State service.

Now, Mr. Volstead is here and I would like to have Mr. Volstead say a word to the committee on this matter.

Mr. RAINEY. Mr. Clague, in your weighing has the Secretary of Agriculture supervision of your weighmasters?

Mr. CLAGUE. No; not of the weighmasters; that is under the State supervision. As I say, I never heard a complaint as to these weighings. The weighings are accepted by the railroad companies, and are universally accepted everywhere. We want official weighing, and we have got it, and it is right there at home, where if there is any fault to be found with the weighing it can be settled.

Now, if the committee feel that they can accept that amendment, I will not ask the committee to delay these hearings; but if the committee feels that they would like to hear these gentlemen, I will ask that the hearings be continued until to-morrow.

Now, I would like to have Mr. Volstead, who is specially acquainted with the work there, make a statement to the committee.

Mr. TINCHER. In connection with your statement, Mr. Clague, why not ask leave to insert the statement of these gentlemen in the hearings?

Mr. CLAGUE. Yes; I will ask leave, if the committee does not continue these hearings, to have inserted in the hearings the statements of Mr. Quist and Mr. Thompson, if I may insert those to-morrow. All we ask is that the bill be amended by striking out the approval by the Secretary of Agriculture.

Mr. CLARKE. May we have the advantage of those statements before the bill is reported?

Mr. CLAGUE. I will hand them in just as soon as possible.

Mr. CLARKE. I suggest that immediately after you get them that you have copies made and turn them over to the members of the committee.

Mr. CLAGUE. I will be glad to do that.

The CHAIRMAN. The only thing they are contending for is what you have mentioned?

Mr. CLAGUE. Yes; and I have a letter from Mr. Putman, one of the railroad and warehouse commissioners, and he states that that is the part they are vitally objecting to.

The CHAIRMAN. We will hear Mr. Volstead, if he cares to make a statement. I have received the following telegrams from Minnesota:

MINNEAPOLIS, MINN., *June 10, 1922.*

Hon. G. N. HAUGEN,
House of Representatives:

I regard it of absolutely vital importance that our State railroad and warehouse commission be heard by your committee on grain futures act which is now before you, before the matter is disposed of. They can not possibly come before June 27. Please arrange to have them heard at that time or immediately thereafter. Will much appreciate your cooperation, as I am sure it is in interest of the whole country because of importance of measure.

J. A. O. PREUS,
Governor State of Minnesota.

ST. PAUL, MINN., *June 9, 1922.*

GILBERT HAUGEN,
Congressman, Washington:

Railroad and Warehouse Commission of Minnesota desires to present full data in reference operation of weighing department of the State before Agricultural Committee in connection with 11843 due to press of business and court cases impossible for commission to be present before June 27; respectfully request date for hearing set on this bill before your committee as soon after 27th as possible.

O. P. JACOBSON, *Chairman.*

ST. PAUL, MINN., *June 10, 1922.*

G. N. HAUGEN,
Member of Congress, Washington:

Impossible for me to attend hearing Monday on account of my health. Our State weighmaster and supervisor of scales will leave for Washington to-night and arrive Monday morning. Our commission are not opposing Tincher bill in regard to futures trading. What we are opposed to its interfering with our State rights in weighing grain.

O. P. B. JACOBSON.

STATEMENT OF HON. ANDREW J. VOLSTEAD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA.

Mr. VOLSTEAD. Let me say in connection with that that I think there is a general feeling on the part of the Members of the House and on the part of the country generally that we ought not to take over any more activities on the part of the National Government than necessary.

Now, for many years our State has taken a great deal of interest in trying to secure fair weighing and fair inspection, and it seems to me that where the States does act we ought not to interfere, unless there is a special reason for it.

Now, if the State weighing has been provided and it does burden commerce—I mean interstate commerce—discriminates against interstate commerce, it is a familiar rule with lawyers that the courts will readily set those actions aside.

It is one of the things that we all know as lawyers, so it seems to me there is no necessity of undertaking to turn this whole thing over to the Federal Government. Let the Secretary of Agriculture work in cooperation with the States wherever it can be done without injustice to your commerce.

I hope that the committee will see fit to adopt the amendment that has been suggested. I am not able to see how it can possibly injure anyone.

Mr. KINCHELOE. Let me ask you this, Mr. Volstead: I assume you are familiar with section 5 of this original act; that is, the provision that the Secretary of Agriculture is authorized and directed to designate boards of trade as contract markets when, and only when, such boards of trade comply with the following conditions and requirements, one of which is section (a). Suppose it turns out that the weighing on any board is not satisfactory to the Secretary of Agriculture and the dealers on the board, what I want to know as a lawyer is whether you think the Secretary of Agriculture under this original act here would have any power to take any action in the matter.

Mr. VOLSTEAD. I do not think he would have any power, unless there is a discrimination against interstate commerce or if it burdens interstate commerce.

Mr. KINCHELOE. Then it is a power to take this weighing from them?

Mr. VOLSTEAD. I think so. I have not studied it.

Mr. CLARKE. According to the hearings, there isn't any dissatisfaction with the weighing.

Mr. KINCHELOE. No; I was putting this as a hypothesis.

Mr. VOLSTEAD. Our legislature and the people up there are very anxious to have this, and we never would do anything to interfere with the business.

Mr. KINCHELOE. What do you think of that, Mr. Tincher, as a lawyer?

Mr. TINCHER. I agree with you.

Mr. MCLAUGHLIN of Michigan. This weighing has been satisfactory?

Mr. VOLSTEAD. Yes; it always has been, so far as I know.

Mr. MCLAUGHLIN of Michigan. For how long a time has that been the case?

Mr. VOLSTEAD. For 25 years, at least. Mr. Steenerson probably knows more about that than I do.

Mr. STEENERSON. For at least that long.

Mr. CLARKE. There has not been any dissatisfaction expressed in the record.

Mr. TINCHER. We all recall the reasons given by Mr. Morrill, that some places had applied for the service that did not have any inspection service at all.

Mr. MCLAUGHLIN of Michigan. Are there any places that are contract markets, or that can reasonably ask to be made contract markets, where it is not satisfactory?

Mr. VOLSTEAD. If it is a matter of getting satisfactory weighing, we can trust the State government as well as the Federal Government, where they are as much interested in getting fair weighing, if not more interested, than the Federal Government.

Mr. MCLAUGHLIN of Michigan. I have been told—I think I am right about it—that that has been made an issue in politics in Minnesota.

Mr. VOLSTEAD. The weighing has never been in issue in Minnesota.

Mr. CLAGUE. It has never been an issue. I dare say there is no farmer in Minnesota that has made a complaint. There would be complaint, and it would be an issue if it were taken over by the Federal Government.

Mr. MCLAUGHLIN of Michigan. My information was that it had existed a long time ago, and the State took it over and handled it to the satisfaction of all the people.

Mr. CLAGUE. There was a time, before the State took it over; yes.

Mr. MCLAUGHLIN of Michigan. I am asking how long it was when it was not satisfactory to all the people.

Mr. CLAGUE. This has been in operation for 25 years, to my knowledge. I think Mr. Steenerson can give it more accurately. How long has it been in operation, Mr. Steenerson?

Mr. STEENERSON. About 30 years. And about this political issue—it was an issue before the State instituted a weighing service, but never since. Both parties and everybody has been agreed as to the State weighing and the State inspection service; they all agree that the State weighing and State inspection service has been sufficient, and it has never been an issue since that time.

Mr. MCLAUGHLIN of Michigan. I do not have in mind any particular date when it was a political issue, but I had in mind that they had stirred up the State considerably at one time, and the State took hold of it.

Mr. STEENERSON. That is the reason it was done. There was a complaint about the brass kettle, and several other instrumentalities that were used. But after the State took it over, there was never any issue about it politically; and all this talk that it was an issue is a mistake. We have all been satisfied.

Mr. JONES. Let me ask this question of Mr. Volstead, or some one. Mr. Volstead, has there ever been any complaint, since the State took it over, that special preference was given to the people of the State over the people who shipped in from outside of the State?

Mr. VOLSTEAD. Never, so far as I know.

Mr. JONES. No complaint of any kind?

Mr. VOLSTEAD. There has never been any complaint of any distinction being made between the people outside of the State and those residing in the State. The same officers do the weighing and the service is under the same officials.

Mr. JONES. And the service is the same, wherever it comes from?

Mr. VOLSTEAD. Yes; and as a rule they do not know where it comes from—whether from within the State or from outside.

Mr. TINCHER. There is no provision in this bill that the Government weigh the grain. It is not contemplated that the Government weigh the grain. It is different from the packer control act. It is a question what the Secretary of Agriculture can demand. I have been assured there is no thought of trouble with the authorities.

Mr. MCLAUGHLIN of Michigan. Does it occur to you, Mr. Volstead, that there are some cases where it is not satisfactory and changes ought to be brought about, and that this would take it out of the power of the Secretary of Agriculture to interfere in any way?

Mr. VOLSTEAD. Oh, if it is official it must mean it must be under a State law of some kind. Now, it seems to me there could not be any danger in this, because the State courts would control; and if it interfered with interstate commerce or burdened interstate commerce, then the old, familiar doctrine is that the courts will immediately correct it.

Mr. MCLAUGHLIN of Michigan. There are some large markets—St. Paul has a big market—and they ask to be relieved of Federal supervision as to weighing. There is something in the packer control act which would seem to give the Federal Government authority to see that the weighing is properly done. Now, there are a great many stockyards in the country—a great many of them—and a great many of them ought to be regulated. And if we start out by taking the hands of the Federal Government of the weighing of grain and say it is properly a State function, and something which the Federal Government ought not under any circumstances to interfere with, what will we say to the demand that is being made—and it is being made right now—that the Federal Government should take no hand in the weighing of live stock?

Mr. VOLSTEAD. I think that is true. Wherever there is no official weighing—wherever it is not weighed under some State law—I think the Federal Government ought to step in. But it does seem to me that Congress should trust the State to pass some decent law and enforce it decently.

Mr. RAINEY. Suppose they do not do it?

Mr. VOLSTEAD. Then you have recourse to the courts.

Mr. RAINEY. Do I understand that this takes place only at places where there are future markets?

Mr. CLAGUE. This bill only applies to the future markets, and there are only seven of them.

Mr. TINCHER. Most of the weighing takes place at other places, anyhow.

Mr. CLAGUE. The stockyards are an entirely different matter.

Mr. KINCHELOE. Let me get the attention of the committee for a minute. Mr. Morrill asked for something, because there is a little board of trade in one of the Southeastern States that applied to be made a contract market, and it was refused because they did not have the facilities. Now, this act provides, in the latter part of paragraph (a) of section 5, "and having recognized official weighing and inspection service." I think under that act the Secretary of Agriculture could refuse to designate any board of trade as a contract market, and give that as his reason. I do not know whether you lawyers agree with me or not. But if it did have official weighing service, and if it should turn out that it was unsatisfactory—so unsatisfactory that it was unfair, I believe under the general powers of this act the Secretary of Agriculture could say to them, Notwithstanding the language of this act, if you do not correct this, I will withdraw you as a designated contract market.

Mr. MCLAUGHLIN of Michigan. I doubt that.

Mr. KINCHELOE. If he has the power to designate, he has the right to take away that designation for cause.

Mr. MCLAUGHLIN of Michigan. Under the authority which the act gives him.

Mr. JONES. It says: "When located at a terminal market upon which cash grain is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the grain and the difference in value between the different grades of grain."

Mr. KINCHELOE. And then it goes further and says, "And having recognized official weighing and inspection service."

I did not clearly get Mr. Morrill's contention. I am not passing on this amendment now at all. So far as Mr. Morrill is concerned, he did not make that clear to me.

Mr. NEWTON. Mr. Kincheloe, may I ask, in this State where this question was raised, did they have any official State weighing?

Mr. KINCHELOE. I do not think they did have any official weighing.

Mr. NEWTON. Then I do not think it applies at all.

Mr. KINCHELOE. I am not passing on this amendment now, but if they did have sufficient weighing service, I believe if in the future it finds out that it is unjust, under his general powers he could go to that market and say, We will withdraw you as a contract market. I mean, under the original subsection (a) of section 5.

Mr. NEWTON. It seems to me if it can be proven under the original act that there is a recognized official weighing service, that then that portion of the law has been complied with. But this goes further than that.

Mr. KINCHELOE. I understand that. I am talking about the original act.

Mr. NEWTON. This says all of that. It may be recognized, but nevertheless it must be with the approval of the Secretary of Agriculture.

Mr. MCLAUGHLIN of Michigan. Suppose, now, that some time in the future, as this act runs along throughout the years, there is no official weighing service at some of these markets, and you strike out from this bill all reference to control by the Secretary of Agriculture, what is going to happen at those markets? They have no official weighing service, and nothing recognized; the Secretary has no right to interfere, and what are you going to do?

Mr. CLARKE. Congress will rise up and attend to that.

Mr. NEWTON. I presume there would be legislation, as Mr. Clarke suggests, or there would be some amendment which would permit the Secretary to bring in something under which there could be a revocation of the original designation of the market. That would be done under the original act.

Mr. CLAGUE. It would not apply to the original act. This has got to be where grain is sold in sufficient volumes to reflect the values and differences in grades.

Mr. TINCHER. Let me suggest this: This is a matter that will come up on the consideration of the bill. Let us get through with the witnesses, and then take up the bill. Is there anything more you wanted to say, Mr. Volstead?

Mr. VOLSTEAD. No; I believe I have said all I care to say.

Mr. TINCHER. Is there any other gentleman here who wants to be heard?

The CHAIRMAN. Mr. Newton, are any charges made for the weighing?

Mr. NEWTON. It is my impression there are not, Mr. Chairman. I would not want to state that as a fact. Mr. Steenerson, I think, knows better than I.

Mr. STEENERSON. I think there is a charge.

Mr. JONES. It is one charge for weighing and inspection.

Mr. STEENERSON. Likely that is true. It is considered one transaction.

Mr. NEWTON. I may be mistaken, but I think it is all included in the inspection charge.

Mr. STEENERSON. That may be. But it strikes me that is purely academic. There is no market likely to be designated as a public market, as pointed out by Mr. Clague, that does not have a sufficient weighing service. It is purely a fanciful thing to suppose such a thing, that they would not have sufficient weighing service.

The CHAIRMAN. For the record, the representative of the department says that charges are made at all the markets; a reasonable charge.

Mr. STEENERSON. I hope that the committee will modify that section, because without it I don't know how we can operate. The people are very sensitive about this. They do not want any opportunity for the Federal Government to take away this weighing service, and if you should leave that language out, I am satisfied that the State authorities would be opposed to the whole bill.

Mr. McLAUGHLIN of Michigan. The same conflict exists—the same difference of opinion exists between the State authorities and the Federal authorities in St. Paul under the packer control act. Would our action here this morning be a precedent for asking action in the packer control act? Everything may be all right in St. Paul, but there are a lot of packers throughout the country.

Mr. CLAGUE. There may be a lot of packers throughout the country, but there are very few future terminal grain markets. There are only seven in the United States.

Mr. McLAUGHLIN of Michigan. What was the basis of the complaint in the stockyards controversy in Minneapolis, as to whether the State government or the Federal Government should do the weighing in the stockyards?

Mr. STEENERSON. The Secretary of Agriculture said that under the law it was his business—under the act, it was his business to take it over. The State commission believed it was its business. And they did not want their jurisdiction wiped out. They wanted to continue the weighing service. I do not understand there was any other controversy except a controversy as to jurisdiction. Of course, there were a large number of employees.

Mr. TINCHER. Mr. Chairman, I move we proceed to a consideration of the bill section by section.

(The motion was seconded, and duly carried.)

Mr. RAINEY. I move, Mr. Chairman, that we go into executive session.

(The motion was duly seconded and carried.)

(Whereupon, at 11 o'clock a. m., the committee proceeded to the consideration of the bill in executive session.)

(The following statements were submitted as permitted by the committee:)

STATEMENT OF P. P. QUIST, STATE WEIGHMASTER FOR THE PAST 21 YEARS OF THE MINNESOTA RAILROAD AND WAREHOUSE COMMISSION AT MINNEAPOLIS, MINN.

The Minnesota Grain Weighing Department was created by the State Legislature in 1885, and placed under the supervision of the railroad and warehouse commission. This commission, consisting of three members, are elected directly by the people for a term of six years, one commissioner elected every two years, the other two holding over. All appointments in the grain department are made by the commission, and employees are carefully selected, with due regard to age, character, intelligence and general fitness, for the position to which they are assigned. The compensation of the employees varies with the responsibility attached to the work in which they are engaged, and all must take an oath of office and furnish a surety bond of $5,000 for faithful performance of their duties under rules laid down for their government, which rules are made by the commission. While there is no civil service law in our state, yet the best of civil service is practiced, as removals have rarely occurred, and then only for violation of rules and incompetency. Many of the employees are still in the service who were identified with it at the time of its inception, their trained judgment, from years of experience, rendering their service valuable. This is especially true of the grading of grain.

The Minnesota Grain Weighing Department was organized as a medium between buyers and sellers of grain. Its purpose is to furnish true grades and accurate weights that are independent of either party and to aid in an equitable adjustment of disputes in so far as correct weights are concerned. The department consists of a chief weighmaster, a clerical office force, and weighers stationed at the mills and elevators; also scale experts and yard watchmen.

THE WEIGHING.

Before any final accounting can be made by the commission merchant to a country shipper, or settlement made between buyer and seller, the weight of the grain must first be ascertained. For the purpose of determining this weight, State weighers are stationed in the terminal mills and elevators, who take charge of the cars on their arrival at the respective stations and carefully weigh the grain before it is delivered into the possession of the buyer. The State weighers must make a careful inspection of the general condition of the cars as they are received and note any bad conditions found. A record of the seal number is also taken. The car is opened and shippers' weight cards removed. The weighing is done either on track scales or large hopper scales located at each mill or elevator. In case of track scale, the loaded car is placed on the scale and the gross weight taken. After the car has been unloaded it is weighed

back empty to determine the net weight. In all cases the car is detached from other cars during the weighing process. In case of hopper-scale weight, the contents of the car is unloaded into a receiving pit and elevated directly to the garner (a large receiving hopper located just above the scale hopper). After the scale has been properly balanced and the hopper valve closed, the grain is drawn down from the garner into the scale hopper and weighed, usually in one draft, unless it is a very large load, when two drafts are taken.

At the larger elevators where the weighing is done in the cupola, two men are employed by the State, the one being downstairs called a supervising weigher, who sees that the cars are properly swept and notifies the weigher upstairs, either by speaking tube or telephone, that the grain is ready to be weighed.

All scales over which State weights are given are equipped with type registering beams, so each weight is double checked. The weight is first read from the beam and entered into a book by the State weigher. He then inserts a specially prepared card in the recording beam, presses a lever, and the weight is stamped on the ticket, and compared with the entry in the book before he leaves the scale. Since an incorrect record can not be obtained from a type registering beam, it is practically impossible for errors to enter into the work of weighing under the present system. Another check that tends toward accuracy is the fact that all through this weighing operation the State weigher has not been alone in the work, for the house weigher has also been present, which results the two men are able to compare.

Duplicate daily reports are made by the weighers at the close of each day's work. These, together with reports of car conditions and seal records, type register tickets and weight cards, are forwarded to the State weighmaster's office, either by mail or messenger. It is necessary that reports be on hand at 8 o'clock a. m. on the day following the weighing.

After the type-register tickets are checked with the weigher's reports by the office clerks, an official certificate of weight is issued, bearing on its face the car number, initial, contents and State weight, together with the date and name of weighing station. This certificate is stamped with the seal of the State weighmaster and forms the basis of settlement between the shipper and buyer in the matter of weights. The railroads also base the freight charges on the State weight. Should bad-order condition be registered against the car this fact is noted on the weight certificate. Certificates are issued without expense to any interested party.

Scale experts are employed, whose duties are to test scales used by the State department and keep them adjusted to the Government standard of weights. After the scale is tested, it is sealed to prevent willful or accidental changing of the scale levers without the knowledge of the department. The State supervision is not confined to the testing of scales, but takes up the details of proper scale construction, elevating machinery and all apparatus that enters into the handling of grain, before it is finally weighed.

Another very important branch of the weighing department is the system of patrol service in the terminal railroad yards, whereby the grain cars passing through the terminal yards are scrutinized to see if leaking. Leaky cars are often found and reported by the special watchman, which would not have been found had they not been seen while in motion, for cars which leak, more or less, while being bumped about often show no leak when set for unloading, or while standing still.

The Minneapolis weighing department supervises the handling and weighing of grain at 78 mills and elevators in Minneapolis, and 30 mills and elevators scattered throughout the Northwest, and weigh annually from 225,000 to 350,000 carloads of grain. To keep the various mills in Minneapolis alone in operation requires about 450 carloads of grain every 24 hours when the mills are operated to their regular capacity. A large percentage of the grain shipped to this market is stored in the terminal elevators when grain receipts are heavy. This grain supply is drawn upon as needed for grinding, when it is weighed out, loaded into cars, and forwarded to the mills, where it is weighed again when unloaded. Each car carries a card showing the loading weight, and the name of the elevator where it was loaded. The loading and unloading weights are compared, and any discrepancy above normal shrinkage means an immediate investigation to locate the difference. It is by such a check that scale defects are at once discovered and corrections made. It is also by such cross-town movement of grain that a check can be made on the efficiency of the weighing service, as the responsibility for both weights rests on the one weighing department. I submit herewith a statement showing the cross-town handling of grain in Minneapolis for a crop year, which statement speaks for itself.

STATEMENT OF CLEAR RECORD CARS USED IN THE CROSS-TOWN MOVEMENT OF GRAIN FOR THE CROP YEAR WHICH BEGAN SEPTEMBER 1, 1919, AND ENDED AUGUST 31, 1920.

Total number of cars handled, 13,988; average shrinkage, 53⅛ pounds per carload. When taking into consideration that from 10 to 15 pounds are taken from each car by the samplers for grading purposes, the average shrinkage is less than 40 pounds per carload.

The weighing department, while performing its function of weighing and certifying to weights of grain, also provides information to shippers, who assume they have suffered a loss of grain in transit, due to leaky cars or other causes. For this purpose, an office in charge of efficient and experienced persons is provided. Here all the seal records and other essential data are kept on file, and any person desiring to have an investigation made as to the physical condition of the car and the seal protecting its load need only to file an application to receive a complete description of the car from the time it was first sampled by the inspection officials until it is set for unloading at the mill or elevator. This information embodies the number and kind of seal on the car when it was sampled for inspection and reinspection, also the seal recorded by the sampling bureau in taking samples for the commission firms for selling purposes. These samplings often occur three or four times, and every transaction is recorded and a record kept of each seal broken and the kind of applied. All this information is recorded and made a part of the records of the office.

From these records a complete report is furnished to the applicant claiming a shortage and is used by him to substantiate his claim on the carrier. There has been a decided improvement in the handling and weighing grains at the terminal markets during the past 20 years. The small scale with its plain beam has been discarded, and in its place we find the 1,600 or 2,000 bushel hopper scale, with type registering beam. The elevator leg, with its turn-head, whereby the grain could be diverted, has been replaced by the stationary turn-head, which means that the grain from the unloading pit can not be diverted before it is weighed. The small track scale resting on shallow wood foundation has given way to the modern 150-ton scale, built on solid concrete.

In connection with the weighing department, a registration bureau is maintained which compiles and keeps accurate account of the grain received and loaded out of terminal elevators. This bureau certifies to the amount of grain in storage and issues warehouse receipts for it, which are used by the owners of the grain as collateral in borrowing money, and these warehouse receipts are considered by the banks as the highest grade of security, and they are of great benefit in raising the vast sums of money required to handle the crop.

I will say in conclusion, that it is the constant aim of the State weighing department to furnish true and exact weights, keep true records of seal and car conditions, so that such information may be available to all interested parties. The Minnesota grain department enjoys the confidence of the grain trade, and it would not be to the best interests of the producers and shippers of grain to abolish this service that has taken so many years to establish.

Respectfully submitted.

P. P. QUIST, *State Weighmaster.*

STATEMENT OF W. E. THOMPSON, STATE SUPERVISOR OF SCALES FOR THE MINNESOTA RAILROAD AND WAREHOUSE COMMISSION.

In appearing before your committee, I wish to present a statement from an experience covering 21 years of my connection with the Minnesota Railroad and Warehouse Commission in its carrying out the provisions of the grain laws of the State of Minnesota enacted in 1885.

Our State has had a grain-inspection and a grain-weighing service since August 1, 1885, and as a consequence of the services rendered by bonded State grain inspectors and State grain weighers, the terminal markets of Minnesota have enjoyed a distinction of a splendid reputation all these years for the accuracy of weights in its terminal elevators and the fairness of its grades.

I am concerned for our Minnesota Railroad and Warehouse Commission with the maintenance of the weighing service in grain terminal elevators throughout our State, under and in conformity with our State laws, and I believe that H. R. 11843, section 5, subparagraph (a) should be amended to allow of the continuance of that State regulatory and supervision service.

In connection with this, allow me to say that my first experience as one of the commission's employees was as a weigher of grain in 1901, later holding other positions under the commission, at their request, in the grain service, and since 1908 as actively in charge of track scale supervision, later of supervision over all of the scales of the larger capacities in the State of Minnesota for the commission; hence my connection with the grain-weighing service has been a continuing one since 1901, or a period of 21 years, and in all of that time it has been my observation that State bonded weighers actually perform the weighing service, and that as such they are a neutral, noninterested body of men, functioning in the establishment of a weight, which is acceptable by the seller, by the purchaser, and by the railroad companies in freight settlements. Minnesota weights are recognized over the entire United States as being accurate without question, if we can accept statements of the grain trade in other markets and of the railroads and the producers and grain-handling public, and they are accepted as of a high character and beyond reproach.

In addition to the actual weighing service performed by bonded employees, the supervision provided in our grain laws of the State of Minnesota goes to a safeguarding of the grain from the time it reaches a terminal market until it has passed to the miller for grinding purposes.

The freight yards, into which the cars of grain come, are policed by the State weighing department of the commission; the grain cars are policed through to the actual weighing of the grain into the terminal elevators; conditions of the cars are noted and reported, for the protection of the shipper; the appliances used in the receiving of the grain into an elevator and the scales therein, whether they are railroad track scales or hopper scales, in the cupola, are under the constant and daily inspection of the State weighers operating them.

In addition to this the scale department maintains a scale inspection force of eight inspectors, giving all of our scales two annual, regular inspections and tests, with such additional inspections and tests as become necessary by reason of complaints or variations in weights between terminal elevators and mills or between two State shipping points, whether located in the same terminal or not, and the scales are tested on the motion of the department whenever there appears to be variations in weights between any two points.

Under section 5, subparagraph (a), lines 15 and 16, appear the words "approved by the Secretary of Agriculture for the purpose." It is not known what the import of this particular phraseology will mean. We feel that it will mean that it will abolish the State weighing service of the State of Minnesota, and if that is done it will mean that the chamber of commerce at Minneapolis and the board of trade at Duluth, constituted of grain handlers in the shape of elevator and mill owners, commission merchants, and grain traders, will of necessity be obligated to do this weighing. Somebody must perform this function, and certainly it can not be contended that the interested party in the receipt and sale of this grain should properly be the one to perform this function. These markets appear to me to be happy in their ability to furnish a State certificate of weight, issued by a bonded, neutral State weigher, who neither knows who owns or who is to receive the grain he is weighing. In my opinion it would be the height of unwisdom to abolish that service.

I do not find that in the bill there is provided for a Federal service, which shall be the equivalent of the State service that has functioned all these years, and with which shippers from Northwestern States, including Montana, North and South Dakota, Nebraska, Kansas, and frequently Iowa, have become accustomed, by reason of the fact that they have, in a more or less large volume, shipped grain to the Minnesota terminals. It is my contention that this is properly a State function, exercised as a part of the State's police power, and as such ought not to be objectionable to the Secretary of Agriculture in the carrying out of the other provisions proposed by this bill.

The Minnesota weighing service, as required by our Minnesota Railroad and Warehouse Commission, in conformity with our State laws, is apparently very well thought of by industries doing business in other States, and because of this fact the Minnesota commission has made special weighing contracts, furnishing Minnesota bonded State weighers to perform the weighing service at two different mills in North Dakota, one mill in Iowa, one mill in Wisconsin, and has even established its weighing service, through the same kind of a special contract, at Portland, Oreg. In each of these cases where this service has been established outside of the confines of the State of Minnesota it has been upon a special contract between the parties involved and because of a guaranty of and a payment to the State of the total expenses involved in rendering the service.

There should be no objection to the establishment of such a weighing service by any State, which will carefully and conscientiously carry out the duties imposed by laws similar to those of Minnesota. In this connection, during my period of service with the Minnesota commission it has been my observation that railroad and warehouse commissioners or grain commissioners from Montana, North Dakota, South Dakota, Nebraska, Kansas, and Missouri have repeatedly come to Minnesota for copies of Minnesota's forms and blanks and her laws, and my information, while not definite and positive as to the individual State, would lead me to the belief that in nearly all of these State mentioned legislation has been enacted incorporating the Minnesota grain-supervision laws.

Section 8747½f (sec. 7), page 1405, United States compiled Statutes 1918, provides that the Secretary of Agriculture may license inspectors for the grading of grain under such rules and regulations as he may promulgate. In this section the following wording occurs: "*Provided*, That in any State which has, or which may hereafter have, a State grain inspection department established by the laws of such State, the Secretary of Agriculture 'shall' issue licenses to the persons duly authorized and employed to inspect and grade grain under the laws of such State." Under this section the Secretary of Agriculture has licensed all of the grain inspectors appointed by the Minnesota Railroad and Warehouse Commission under the Minnesota laws.

Under the proposed subsection (a) of section 5, lines 15 and 16 of H. R. 11843, if the Secretary of Agriculture did not approve of the State weighing service, with its additional many points of supervision and regulation besides the actual weighing of the grain itself, it would seem that this would do away with all State supervision, and I submit the question, Would this not necessarily compel the chamber of commerce at Minneapolis and the board of trade at Duluth to establish this service that is now performed by the State through its body of neutral, noninterested, bonded State employees?

So far as this service relates to the mechanical elements involved in the weighing of grain, the scale inspectors of the scale department of the commission make in their two annual tests and in all other cases where elevators are visited a critical examination of the receiving pits, the receiving boots, the legs that elevate the grain to the hopper scales, the garners in which that grain is momentarily stored just immediately before it is weighed, and the hoppers of the scales themselves, which are located directly underneath the scale garners, and a complete physical examination and a complete and comprehensive test of the scales. These examinations are regularly made twice annually, and every possible safeguard is thrown around the mechanical elements involved in the terminal elevators to insure the accuracy of weights on all of the grain received at and shipped from them.

The same is true of those elevators and mills employing railroad track scales in the receipt and the shipment of their grain. In addition to the two regular tests and two regular inspections of all of this machinery, such additional tests and additional inspections are made as the scale department deems necessary, taking into consideration each day the daily movement of grain between State weighing points so that on any occasion of apparent discrepancies on weights between two points, inspections and tests of the scales involved and the elevators involved are immediately made by the scale department, which is in addition to the regular daily critical examination of these scales and the handling appliances used with the weighing of grain made by these bonded State weighers.

There are involved in the Minnesota grain-weighing service at all points approximately 130 different weighing stations and approximately 350 different scales over which grain is weighed, and I submit that the existing State machinery that functions through an extremely small cost per bushel of the grain weighed, and which does not and can not by the fact of its very low cost produce a burden upon interstate commerce, I submit that that State regulatory supervision should not be superseded by Federal regulation or Federal service. Prior to Federal regulation under the grain standards act, the fees established by the Minnesota commission fluctuated from 15 to 50 cents per carload. Since the operation of the department under the Federal act the fees are doubled. The Minnesota commission regulates the fees to the needs of the service, increasing or decreasing the fees in accordance with the volume of business to a point which will provide only sufficient revenues for operation. In this connection the average annual surplus of revenue over expenses has been $1,200. This covers a period of operation since August 1, 1885.

X

BUTTER BILL

MINING IN WICHITA GAME RESERVE

HEARINGS

BEFORE THE

COMMITTEE ON AGRICULTURE

HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS

SECOND SESSION

JUNE 17 AND 21, 1922

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HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS.

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BUTTER BILL.

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Saturday, June 17, 1922.

The committee met at 10 o'clock a. m., Hon. Gilbert N. Haugen (chairman) presiding.

The CHAIRMAN. Gentlemen, the committee has met this morning to consider H. R. 12053. I might state that my attention was called to the fact that certain States, among them the State of Massachusetts, have passed laws adopting the Federal regulation with reference to the standards for butter. The ruling of the department some 16 years ago required 82½ per cent butter fat.

Mr. VOIGT. Was that pursuant to an act of Congress?

The CHAIRMAN. That was a regulation adopted pursuant to the pure food and drugs act.

Mr. VOIGT. Then the present rule which has the force of law is that butter must have 82½ per cent of butter fat?

The CHAIRMAN. Yes; but that rule has never been enforced. All that has been required has been 80 per cent butter fat.

Mr. MCLAUGHLIN of Michigan. Do you mean they made a ruling which has the force of law which has not been enforced?

The CHAIRMAN. It is not practicable, because that is absolutely contrary to the practice in this country and also in other countries.

Mr. JONES. Mr. Chairman, are we going into hearings on this new legislation now?

The CHAIRMAN. The only thing suggested in the bill is to make the rule requiring 80 per cent fat, which is being applied now, the law.

Mr. MCLAUGHLIN of Michigan. The present ruling requires 82½ per cent?

The CHAIRMAN. Yes; but it has never been enforced, and if butter were shipped into the State of Massachusetts containing less than 82½ per cent it would be seized and held up. A stay of 30 days has been secured so the Massachusetts law will not be enforced for 30 days but after the 30 days has expired a shipment of butter into that State containing less than 82½ per cent butter fat might be held up.

Mr. MCLAUGHLIN of Michigan. Can we pass a law to compel them to accept butter contrary to their State law?

The CHAIRMAN. No; but the law of Massachusetts has adopted the Federal standard, which according to the rule is 82½ per cent as the standard to be observed there, while in fact in other places it is only 80 per cent.

Mr. MCLAUGHLIN of Michigan. Is it a law or ruling of the State of Massachusetts?

The CHAIRMAN. My information is that it is the law. That is, the law authorizes the adoption of the Federal standards. A change in the Federal standards, as this bill proposes, would automatically change the Massachusetts standard to 80 per cent.

Mr. TINCHER. Let me see if I understand this matter. The Legislature of Massachusetts has passed a law adopting the Federal standard, and the Federal standard is now 82½ per cent, but they have never enforced that ruling and have always called for 80 per cent butter fat?

The CHAIRMAN. That is correct.

Mr. THOMPSON. Who has never enforced it?

The CHAIRMAN. The department.

Mr. THOMPSON. Why did they adopt a rule and then never enforce it?

The CHAIRMAN. It has never been enforced anywhere, because it is not in line with general practice.

Mr. HAYS. Does the Massachusetts law incorporate the percentage or just adopt the Federal regulation?

The CHAIRMAN. It adopts the Federal regulation by law.

Mr. HAYS. If we change the percentage to 80 per cent, will that automatically change the Massachusetts law?

The CHAIRMAN. Yes; and there are a number of other States that have adopted the same requirement?

Mr. MCLAUGHLIN of Michigan. Who knows whether the Massachusetts law provides for 82½ per cent specifically or whether it provides for the standard that is fixed by the Government?

The CHAIRMAN. By law it provides for the adoption of the Federal standard. That is what is stated in this letter which I have before me. We have representatives from the Department of Agriculture who can give us the information. I would suggest that we now hear from Mr. Campbell.

Mr. TEN EYCK. Just one moment, Mr. Chairman. The passing of this law will not prevent Massachusetts from doing just what she is doing now, and that is, insisting upon the butter that comes into that State containing 82½ per cent.

The CHAIRMAN. The enactment of this bill would change the Federal standard to 80 per cent, which would automatically also change the Massachusetts standard, because it has simply adopted the regulations of the department as its standard for butter.

Mr. TEN EYCK. Is that due to the fact that their law relates to the ruling of the department?

The CHAIRMAN. They use the Federal standards. That is my understanding. There are a number of other States that have the same law, but most enforce only the 80 per cent which is the practice of the trade.

Mr. TEN EYCK. But of course, that does not prevent Massachusetts from retaining 82½ per cent as the standard for any butter that comes into that State?

The CHAIRMAN. If this bill is enacted into law it would automatically change the standard.

STATEMENT OF DR. W. G. CAMPBELL, ACTING CHIEF, BUREAU OF CHEMISTRY, DEPARTMENT OF AGRICULTURE.

The CHAIRMAN. Doctor Campbell, we will now hear from you.

Doctor CAMPBELL. In the enforcement of the food and drugs act it has been found necessary to express, for the information of the public, standards upon which the department proposes to operate in the enforcement of that law. The terms of the food and drugs act are general in their provisions. They define a product as adulterated, for instance, if it has some essential material, wholly or in part, abstracted. The department recognized at the very beginning, when it undertook the enforcement of this law, that in the adjustments in the industries which inevitably would follow the enactment of legislation like the food and drugs act that there would be, in a great degree, a voluntary compliance with the requirements of that law if the industry only knew what the law required. The industries were not of themselves capable of making a specific interpretation of the provisions of that law and, therefore, did not know what the requirements of the department might be. The department, therefore, promulgated definitions and standards for various classes of food products. Those definitions and standards did not have the force nor effect of law and the Department of Agriculture has never presumed for a moment that they do have. They merely serve as an indication of the administrative position taken by the department in the enforcement of the law.

Mr. MCLAUGHLIN of Michigan. Suppose the department indicates, as you say, a standard and the manufacturers and dealers and so on do not comply with it; what happens?

Doctor CAMPBELL. Then we undertake to enforce the provisions of the law by the collection of that proof which is necessary and would be required to be collected whether we had a standard or not, such, for instance, as the matter of the custom of the trade, Mr. McLaughlin. If we were to find that there was a general practice on the part of the butter manufacturing industry of this country to incorporate as much as 82½ per cent of butter fat in their butter, and we could establish by the industry itself that that was its general practice, then it would be our position in court that the terms of the food and drugs act applied to a product which contained materially smaller quantities of butter fat than that percentage, on the ground that an ingredient had been abstracted in part from the product.

Mr. McLAUGHLIN of Michigan. But you established by your rules 82½ per cent.

Doctor CAMPBELL. That was what was done originally.

Mr. McLAUGHLIN of Michigan. And you gave that out as the standard?

Doctor CAMPBELL. Yes, sir; that was the published standard.

Mr. McLAUGHLIN of Michigan. If that does not have the force of law and you are not authorized to prosecute for failure to observe it, and somebody makes butter with 80 per cent of butter fat, how is he liable, and what do you do?

Doctor CAMPBELL. I was just going to develop that in the course of my statement. I was seeking merely to give you a background for the reasons for promulgating standards and have stated that we have never considered for a moment that they had the force and effect of law. They are more nearly expressions of the criminal limitations we think shall exist in a food product before prosecution would be justified than a standard of that product itself. These expressions are not standards of excellence in any sense at all, but they are indications of the limitations which, if a manufacturer in his practices falls below or fails to observe, we believe that the general condition is such that we would be warranted under the terms of the law in instituting a prosecution.

Mr. McLAUGHLIN of Michigan. I do not quite understand your use of the word "criminal." Ordinarily, one commits a crime when he violates the letter or the spirit of the statute. There are, of course, certain common law crimes but even they have to be provided for by the statutes of the States or at least that is usually done.

Mr. TINCHER. Suppose you, as a department head this morning, try to experiment on this committee by giving us the facts about this bill, and presume for a little while that we are somewhat acquainted with the background. The trouble is that when we have witnesses before us we generally get all background and very little facts. Now, just tell us about the bill and why you want it.

Doctor CAMPBELL. I am not advocating the bill, Mr. Tincher. I was seeking merely to give you such facts as to the conditions which exist at the present time as I could and then leave it entirely to the judgment of the committee to determine whether they wished to adopt the bill or not.

Mr. TEN EYCK. I think, Mr. Chairman, it would be rather interesting to know why they adopted 82½ per cent, first, as a standard, and then changed to 80 per cent.

Doctor CAMPBELL. If you will permit me to go on——

Mr. TINCHER. Yes; go ahead.

Doctor CAMPBELL. I understand it was the practice in the manufacture of butter, which prevailed rather generally, to manufacture at 82½ per cent butter fat when these standards were promulgated. I know that that practice does not prevail now. The general practice is to manufacture it on the basis of 80 per cent. I know, furthermore, that the department has made the announcement that in view of the fact that that is the prevailing practice it will not interfere with the interstate shipment of butter that contains not less than 80 per cent butter fat. That leaves the situation precisely in this fashion: There has never been a repeal of the standard that was promulgated by the department calling for 82½ per cent butter fat. There are a great many of the States that have enacted laws that put into effect automatically the standards promulgated by the department.

Mr. HAYS. May I interrupt with a question there?

Doctor CAMPBELL. Certainly.

Mr. HAYS. You understand the purpose of this bill, I presume?

Dr. CAMPBELL. Quite well, I hope.

Mr. HAYS. Might not the same result be obtained without legislation by the promulgation of a new ruling by the department fixing the percentage at 80 per cent rather than 82½ per cent?

Doctor CAMPBELL. In so far as it related to those State laws that automatically put into effect the standards of the department, that could be done.

Mr. TINCHER. That is, you could promulgate a new rule by the same authority that some department head promulgated the old one?

Doctor CAMPBELL. Yes; but let me explain to you that the standards committee is not under the jurisdiction of the Department of Agriculture to the extent that departmental employees are. The standards committee is composed of nine members. Three of those members are from the Department of Agriculture, three of them are from the organization known as the Association of Official Agricultural Chemists, and the three serving on that committee are

designated by that association. The other three are from the organization of State and Federal Dairy and Food Commissioners, and those three are selected by that association.

When this committee meets and considers a proposition like butter or any other food substance, upon which the desirability of the promulgation of a standard is apparent, it requires all of the information it can from whatever source, takes the matter up with the industry, holds hearings, and upon the basis of that announces what it believes would be a proper standard applicable to the food and drugs act, and automatically accepted by those States that have these State laws.

Mr. TEN EYCK. Did the standards committee act upon this 80 per cent standard?

Doctor CAMPBELL. It has not. It has not modified the existing standard.

Mr. TEN EYCK. Is it behind this bill?

Doctor CAMPBELL. I do not know. I do not think the committee is. I do not think the committee knows anything, perhaps, about this measure. After the committee makes its reports, after it agrees upon what the standard shall be, that report must then be acted upon and approved by each of these two associations, and if approved by them submitted to the Secretary of Agriculture, and if approved by him, is promulgated as a standard. Now, you see from that that the standards committee is not exclusively a Department of Agriculture organization. It is one on which there are spokesmen from the association of all the State food and dairy commissioners of the country and from all the official agricultural chemists of the country.

Mr. MCLAUGHLIN of Michigan. Is there a law which provides for the appointment and organization of that committee?

Doctor CAMPBELL. No, sir. The only thing that has approached that, Mr. McLaughlin, is the designation of such a committee in the appropriation act for the Department of Agriculture for 1903, I believe, which appropriated money to defray the expenses of the operations of this committee. That was before the food and drugs act passed. The committee was found to be of such a serviceable character and to serve such a definite purpose in connection with the food and drugs act that its expenses since then have been defrayed from that appropriation for the enforcement of that act.

Mr. CLARKE. This committee, as I understand it, up to this time has not promulgated any standard, acting as a committee?

Doctor CAMPBELL. Originally, it adopted and promulgated a standard of 82½ per cent. I may say that in the early days this organization was not quite what I have described. I have described to you the organization as it is to-day.

Mr. VOIGT. When this committee promulgated this standard, it became the action of the Secretary of Agriculture, did it not?

Doctor CAMPBELL. Yes; the Sceretary of Agriculture had to approve that standard also before it became a department standard.

Mr. VOIGT. In other words, it became a regulation made by the Secretary of Agriculture under the pure food and drugs act?

Doctor CAMPBELL. It became not quite a regulation but an expression or an information of the administrative course and position of the Department of Agriculture in the enforcement of the food and drugs act as it applied to butter.

Mr. VOIGT. The bill provides in section 2:

"That the word 'butter' as defined in section 1 of the act of August 2, 1886 (24 Stat. L., 209), and in section 4 of the act of May 9, 1902 (32 Stat. L., 193), shall be understood to mean butter as defined in section 1 of this act."

Now, can you give us the definition that is contained in this law of 1886?

Doctor CAMPBELL. I am afraid I can not do that. They relate to internal revenue matters.

The CHAIRMAN. I think I should read that into the record right now.

Mr. VOIGT. I would like to have that definition read into the record so we will know what change is proposed.

(The Clerk read as follows:)

"[Act of August 2, 1886, 24 Stat. L., p. 209.]

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That for the purposes of this act the word 'butter' shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common malt, and with or without additional coloring matter."

"[Act of May 9, 1902, 32 Stat. L., p. 193.]

"SEC. 4. That for the purposes of this act 'butter' is hereby defined to mean an article of food as defined in 'An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine,' approved August second, eighteen hundred and eighty-six; that 'adulterated butter' is hereby defined to mean a grade of butter produced by mixing, reworking, rechurning in milk or cream, refining, or in any way producing a uniform, purified, or improved product from different lots or parcels or melted or unmelted butter or butter fat, in which any acid, alkali, chemical, or any substance whatever is introduced or used for the purpose or with the effect of deodorizing or removing therefrom rancidity, or any butter or butter fat with which there is mixed any substance foreign to butter as herein defined, with intent or effect of cheapening in cost the product or any butter in the manufacture or manipulation of which any process or material is used with intent or effect of causing the absorption of abnormal quantities of water, milk, or cream; that 'process butter' or 'renovated butter' is hereby defined to mean butter which has been subjected to any process by which it is melted, clarified, or refined and made to resemble genuine butter, always excepting 'adulterated butter' as defined by this act."

Mr. VOIGT. Then the law of 1886 is the same as the bill before us down to the word "and" in the sixth line?

The CHAIRMAN. Yes.

Mr. MCLAUGHLIN of Michigan. This bill adds the following words: "And containing not less than 80 per cent of milk fat and not more than 16 per cent of water."

And right there—it may be my fault—but I do not remember of hearing that expression, "milk fat," before. I have always heard it called butter fat.

Doctor CAMPBELL. It has ordinarily been called butter fat.

Mr. VOIGT. Section 3 of the bill before us provides: "That for the purposes of the food and drug act of June 30, 1906 (Thirty-fourth Statutes at Large, page 768), butter is the article of food defined in section 1 of this act."

Now, does the pure food and drugs act contain any definition of butter in it?

Doctor CAMPBELL. No; it does not.

Mr. VOIGT. It refers to butter as one of the food products?

Doctor CAMPBELL. It has no definition of any food product.

Mr. VOIGT. But the description of food product in the pure food and drugs act does cover butter?

Doctor CAMPBELL. Oh, yes; it applies to butter. All the provisions of the food and drugs act apply to butter.

Mr. VOIGT. Then the only way you could prosecute a man under the food and drugs act for putting butter into interstate commerce which is below the usual content of butter fat would be to accuse him of shipping an article of food from which one of the ingredients had been abstracted?

Doctor CAMPBELL. That is right; and if there had been abstracted from something one of its ingredients, in whole or in part, there is a presumption that there is a standard for that product before it was sophisticated, and what is that standard? That is the condition we are up against in the enforcement of the food and drugs act.

Mr. TEN EYCK. They could prosecute them also for adding as well as for subtracting?

Doctor CAMPBELL. Yes.

Mr. VOIGT. My understanding is they do not add anything to butter, but what they do is very frequently leave too much moisture in the butter. They do not churn it long enough so as to take out the moisture, and consequently there is more water in the butter than there should be.

Mr. TEN EYCK. But they could add other things to butter. They add coloring matter, and some States protect the people against the use of more than a certain amount of coloring matter, do they not?

Doctor CAMPBELL. Oh, yes.

Mr. VOIGT. Let me ask you this question: It would be a violation of the pure food and drugs act to add anything to butter outside of salt and coloring matter, would it not?

Doctor CAMPBELL. That is right. We would take that position.

Mr. VOIGT. That point is taken care of already by the pure food and drugs act?

Doctor CAMPBELL. Yes; by the general provisions of that law.

Mr. VOIGT. If I understand your statement before the committee correctly, the point you are up against is that the pure food and drugs act does prevent people from abstracting some of the important ingredients that go to make up butter, and the pure food and drugs act also prevents anyone from adding anything to butter except salt and coloring matter; but the trouble you are up against now is that manufacturers may permit too much of the water to remain in the butter after it is made, and consequently have too much water and not enough butter fat in the butter?

Doctor CAMPBELL. That is practically the situation.

Mr. VOIGT. And what you want now is a definition or a limitation of the smallest quantity of butter fat which may be contained in the butter?

Doctor CAMPBELL. Let me say again that the department is not urging this legislation. We recognize the difficulties under which we operate. Whether the committee wishes to establish a legal standard or not is up to the committee to determine; but if there is a legal standard, it is going to make the operations of the Government in the enforcement of the Federal law, as well as the operations of the State officials in the enforcement of State laws, very much simpler than is the case now. If we undertake to develop a prosecution for the adulteration of butter on the ground that it contains, for instance, 78 per cent instead of 82½ per cent butter fat, we are going to be required to introduce evidence that will seek to establish what the trade custom is with respect to the butter-fat content of butter, and that a product that falls below that is not entitled to the name butter and has been adulterated within the meaning of the general provisions of the food and drugs act.

That involves expense and litigation and some doubt about your ability always to maintain your position. If 82½ per cent butter fat in butter were the practice when this standard was first promulgated, and if as the custom of trade there was a gradual recession from that until the practice became general at 80 per cent, the question can be pertinently asked whether our experience of the past in that respect has been worth anything in the matter of observation and whether we might not be confronted, if the standard were changed to 80 per cent, with a comparable situation in a few years from now, because the trade practice might bring it down to 78 per cent. That would not be the case if there were a legislation standard. I can say to you frankly that the Secretary sees that condition and sees the condition we are in right now, and believes the most satisfactory, and certainly the only final, solution of the matter would be the enactment of some bill that made a legislative definition for butter.

Mr. TINCHER. Is there not also another complication? Of course, I appreciate that complication; but Massachusetts, it has been said, has passed a law which has the effect of adopting 82½ per cent as the standard, which is found impracticable. Now, when their law goes into effect, that would necessitate their officers in the enforcement of that law stopping all the butter that did not contain 82½ per cent, when the department has found by experience that that is impracticable. If we change the standard to 80 per cent. or pass a law making it 80 per cent, that would relieve the Massachusetts authorities. I do not suppose that they had 82½ per cent specially in mind when they passed that law but simply wanted to adopt the standard which had been adopted by the Government.

Doctor CAMPBELL. I think your presumption on that is correct, from the correspondence we have had with the Massachusetts officials. As was stated by the chairman a moment ago, there are a number of States that have laws that automatically put into effect as the legal standard in the State the standards announced and published by the Department of Agriculture.

Mr. MCLAUGHLIN of Michigan. Do those laws name 82½ per cent or just say that the standard in the State shall be the standard adopted by the Department of Agriculture?

Doctor CAMPBELL. The latter is correct.

Mr. MCLAUGHLIN of Michigan. That is the way they write the law?

Doctor CAMPBELL. I understand so. The laws vary in their wording in some respects but they have that effect.

Mr. MCLAUGHLIN of Michigan. And those laws do not name the percentage in figures; is that correct?

Doctor CAMPBELL. Those particular food laws do not, but there are some States which have by legislative enactment indicated what the butter fat content of butter shall be. Some few States have done that.

Mr. CLARKE. I would like to have it stated in the record what those States are.

Doctor CAMPBELL. I have a list of them here.

Mr. TEN EYCK. I think it would be interesting to the committee if a brief statement were made why 80 per cent of butter fat is required in butter. Is one reason due to the fact that if you have too much water and curd, the butter does not keep as well or carry as well from the producer to the consumer?

Doctor CAMPBELL. That is going into a phase of the butter industry which I am not prepared to speak on. Doctor Larson, from the Department of Agriculture, who has studied that matter, is here and can answer that question.

Mr. TEN EYCK. Is he here now?

Doctor CAMPBELL. Yes, sir.

Mr. TEN EYCK. The point is, that if we are going to establish the percentage of butter fat in butter, we ought to know from some authentic source just what we are doing.

Mr. HAYS. And why?

Mr. TEN EYCK. Yes; and not simply say 80 per cent offhand without knowing anything about it.

Mr. TINCHER. I think the experience of the Department of Agriculture over this long term of years would be some evidence along that line.

Mr. TEN EYCK. That is why I asked the question. I do not know whether the committee is informed along this line or not.

Mr. TINCHER. I think the committee would like to have a list of the States that have passed these laws.

The CHAIRMAN. In that connection, let me read from this letter from Mr. McKay and see if we have correctly the position of the department:

AMERICAN ASSOCIATION CREAMERY BUTTER MANUFACTURERS,
Chicago, June 12, 1922.

Congressman C. N. HAUGEN,
Chairman of Agricultural Committee, House of Representatives,
Washington, D. C.

MY DEAR CONGRESSMAN HAUGEN: I am writing you concerning the fat standard for butter. As you know, there is a ruling in the Department of Agriculture requiring 82½ per cent fat in butter, which is out of line with standards in all other countries and is against the standards recommended by all our dairy authorities. This ruling or standard has been on the books for about 16 years, and never has been enforced, and, of course, never will be enforced.

The bad feature of the whole proposition is some States have adopted the Federal regulations and enacted the same into a law. We have a case of this kind right now in the State of Massachusetts. They passed a law adopting Federal regulations as the standards to be observed in the State of Massachusetts. * * * Doctor Lythgoe is going on the theory that if you have a bad law, the quickest way to get rid of it is to try and enforce it. This is all right in theory, but it does not work very well with the creamery men who make butter and ship it to the East and it is seized and held up in the State of Massachusetts and they are summoned into court, and they have to engage counsel and pay penalties.

The last time I was in Washington and called at your place, I took this matter up with Secretary Wallace and Mr. Campbell, of the Bureau of Chemistry. Mr. Campbell is very much opposed to their ruling, and notified Secretary Wallace there was no use of them having a ruling that was impracticable and could not be enforced. Secretary Wallace was opposed to the ruling, he told me, but he didn't know if he had the authority to revoke it or not, as it came from the standards committee originally. The standards committee, as you know, is composed of three men from the Bureau of Chemistry, three from the Chemists' Association of Official Agricultural Chemists, and three from the Association of American Dairy, Food, and Drug Officials. These men are all chemists. The following is a list of their names:

Association of American Dairy Food and Drug Officials: Dr. W. W. Randall, chief, bureau of chemistry, State department of health, Baltimore, Md.; Dr. L. E. Sayre, dean, school of pharmacy, University of Kansas, Lawrence, Kans.; Mr. R. E. Rose, State chemist of Florida, Tallahassee, Fla.

Association of Official Agricultural Chemists: Dr. Julius Hortvet, chief chemist, State dairy and food commission, St. Paul, Minn.; Mr. C. D. Howard, chemist, State board of health, Concord, N. H.; Mr. E. M. Bailey, State chemist, New Haven, Conn.

Bureau of Chemistry: Dr. W. W. Skinner, assistant chief, bureau of chemistry, Washington, D. C.; Dr. F. C. Blanck, chemist in charge, food control laboratory, bureau of chemistry, Washington, D. C.; Mr. R. E. Doolittle, chief, central food inspection district, Chicago, Ill.

I think there was to be another man appointed from California.

* * * * * * *

If Secretary Wallace could revoke this ruling, the Massachusetts law would become correct automatically, as their law is based on the Federal standards, * * *.

I had a letter from Secretary Wallace this morning. I will quote a portion of his letter:

"I have referred this matter to the joint committee on definitions and standards for consideration at the June meeting. As you know, the standards originated in that committee, which is composed of three members of the department, three members of the Association of Official Agricultural Chemists, and three members of the Association of American Dairy, Food, and Drug Officials. Any standard proposed by the committee must first receive the approval of both of these associations before it is submitted to this department for approval. This procedure requires considerable time, and it would be impossible to effect a change in the existing standard in so short a time as 30 days. The earliest consideration the associations can give to a standard now proposed by the committee will be at their next meetings, which are scheduled for October.

"With regard to the action that the committee and the organizations it represents may take it is my opinion that it would be best to have a legislative standard for fat in butter enacted by Congress. This would clarify the situation finally. I believe that if the industry concurs in this view, favorable consideration by Congress could readily be obtained."

I got a stay from the officials in Boston for 30 days. This is what Secretary Wallace refers to in his letter. Upon receipt of Secretary Wallace's letter today, I wrote to the health officials in Boston to see if I could get them to not prosecute nor seize butter until the October meeting of the joint committee on definitions and standards. * * *

It occurred to me that it might be a good thing for the Department of Agriculture to prepare a bill. I know you are quite busy. I think, however, it would probably be a good thing for you and Secretary Wallace to talk over the situation, because the situation in the State of Massachusetts is quite dangerous. Practically all the salted butter shipped into that State will be below 82½ per cent fat. The unsalted butter will be all right. There is also a good deal of butter that is shipped East into other States that may find its way into the State of Massachusetts. * * *

I will be pleased to hear from you at an early date. I am anxious that if any action is to be taken that it be taken as soon as possible.

Very sincerely yours,

G. L. McKAY, *Secretary.*

The CHAIRMAN. Have you any knowledge of that letter? I understand the Secretary is out of the city to-day.

Doctor CAMPBELL. Yes; I have, Mr. Haugen. That is substantially correct as quoted. I may say that Professor McKay's statement is substantially a statement of the remarks which I made to him. I said to him and I say to you now that our concern with this matter in the Bureau of Chemistry, in the enforcement of the food and drugs act, is to have settled some definite basis or standard for butter which will permit uniform action. At the present time the condition is chaotic. We have a standard that exists for publication purposes and because of the character of the laws of various States, automatically making those standards the standards in those States, that puts the State in the position of attempting to enforce, for instance, an 82½ butter fat standard while the Department of Agriculture can not enforce an 82½ per cent butter fat standard under the conditions of the existing custom in the trade, which, is almost universally on the basis of 80 per cent.

The CHAIRMAN. The language of this bill drafted by the department makes no change in the definition of butter except it adds the words, "And containing not less than 80 per centum of milk fat and not more than 16 per centum of water?"

Doctor CAMPBELL. That is right.

The CHAIRMAN. It is word for word the same as the present act except that it adds those words.

Mr. TINCHER. May we now have a list of the States that have passed legislation on this matter? Suppose you just read that into the record.

Doctor CAMPBELL. The State of Alabama has a standard of 82½ per cent butter fat with 16 per cent moisture. That is a regulation. The commissioner is authorized by law to adopt standards of the United States Department of Agriculture. That was authorized in 1917. The State of Arizona has 80 per cent and less than 16 per cent moisture; State statute, 1919. Arkansas has 82½ per cent and 16 per cent moisture; regulations adopting the Department of Agriculture standards. California has 82½ per cent and 16 per cent moisture by the very same means.

Mr. TINCHER. That is, by regulation?

Doctor CAMPBELL. Yes. Colorado has 80 per cent and 16 per cent moisture by statutes, 1921. Conneticut has 82½ per cent; commissioner authorized by law to adopt standards in 1921. Delaware has no law or regulation. Florida 82½ per cent by adopting department standards.

Mr. MCLAUGHLIN of Michigan. Does it name 82½ per cent in the law?

Doctor CAMPBELL. No; their law says merely that the standard effective in the State under the State laws shall be the standard adopted by the Department of Agriculture.

Mr. MCLAUGHLIN of Michigan. But the other States you named put the figures in the law?

Doctor CAMPBELL. That is right where they have statutes.

Mr. TINCHER. He has not named one yet that has 82½ per cent. So far they have only provided for 80 per cent.

Doctor CAMPBELL. Well, there are some few, Mr. Tincher. Georgia has 82½ per cent; that is also by automatic law. I will say, "by regulation," to indicate that condition, if I may. Idaho has 82½ per cent; that is by statute, 1921; Illinois has 82½ per cent; that is by regulation. Indiana has 82½ per cent and 16 per cent for moisture, regulation. Iowa has 80 per cent; by statute, 1922. Kansas has 80 per cent and less than 16 per cent moisture; statute, 1922. Kentucky has 82½ per cent, regulation. Louisiana has 82½ per cent, regulation. Maine has no legal standard or published regulation. Maryland has 82½ per cent, by regulation. Massachusetts—we have on this tabulated list here no standard, but the very recent action that has taken place has indicated there has been a standard adopted by regulation in that State since this information was available to us for the preparation of this statement, because the activity in that State has agitated the question, and there, as I know, it is 82½ per cent by regulation. Michigan has 80 per cent, statutes of 1922; Minnesota has 80 per cent and 16 per cent moisture; statutes of 1922. Mississippi has 82½ per cent, by regulation.

Missouri has 82½ per cent by statute. Montana has 82½ per cent and 16 per cent moisture; also by statute. Nebraska has 82½ per cent, regulation. Nevada has 82½ per cent, regulation. New Hampshire has 80 per cent and 16 per cent moisture, statutes of 1922. New Jersey has no standard that we are aware of. New Mexico has no standard. New York, we have here only the comment that they have no legal standard or published regulation on their requirements for butter. North Carolina has 82½ per cent by regulation. North Dakota, we have the comment on that: no legal standard and no published regulation. Ohio, no legal standard and no published regulation. Oklahoma has 82½ per cent by regulation. Oregon has 80 per cent by regulation. That is the regulation of the State dairy and food commissioner of 1922 and is his own independent promulgation. Pennsylvania, no legal standard or published regulation. Rhode Island, no legal standard or published regulation. South Carolina, no legal standard or published regulation. South Dakota, 80 per cent, statutes of 1922. Tennessee, no standard. Texas, 82½ per cent, regulation. Utah, 82½ per cent, regulation. Vermont, 82½ per cent, regulation. Virginia, 82½ per cent, regulation. Washington, 80 per cent, Dairy Code of 1919. West Virginia, no legal standard or published regulation. Wisconsin, 82½ per cent, with a permitted tolerance of 2.5 per cent, statutes of 1922, making an 80 per cent product legal. Wyoming has 80 per cent, 16 per cent moisture, statutes of 1922.

Mr. TINCHER. Now, there are only three States you have named that have a percentage of 82½ per cent by statute and there are 14 States that have 80 per cent by statute, and the rest of the States have 82½ per cent by regulation.

Mr. ASWELL. I notice that most of these statutes were enacted in 1922. Why were they so late in enacting a law on the subject; what was the situation before that?

Doctor CAMPBELL. I am not exactly sure what was the situation in those States before that. A great many of the States when they passed their food laws seeking to establish uniformity in food-law legislation and making the terms of the Federal law applicable to the State conditions adopted the standards of the Federal Government by saying that automatically as they were promulgated by the Government they would become of force and effect in. that State. The presumption, I would say, is that not being satisfied with the standard of 82½ per cent, where that became effective by regulation, the legislature itself would pass a statute establishing it at 80 per cent. Of course, in the three cases that provide for 82½ per cent, that would not be the case.

Mr. ASWELL. There was practically no legislation until this year?

Doctor CAMPBELL. Food-law legislation is all recent and perhaps they were operating under the automatic phase of the State law.

Mr. ASWELL. Were those States trying to meet the requirements of the Federal Government, you think?

Doctor CAMPBELL. Yes; there is a tendency toward uniformity in legislation and a tendency toward uniformity in the operations of the States and Federal Government in the enforcement of such laws.

Mr. MCLAUGHLIN of Michigan. This bill, as it is drawn, is little more than a suggestion or expression of opinion. There is not anything in here to the effect that a violation or failure to comply with it is unlawful. It may be that its relation to the food and drugs act would make something unlawful if it were not in accordance with the regulations which are authorized to be adopted.

The CHAIRMAN. This bill does not amend the law except the particular section with reference to the definition of butter. It does not amend the law in any other respect.

Mr. HAYS. Does not the pure food and drugs act provide a penalty so that a violation of this particular section would be covered?

Mr. TINCHER. Certainly.

The CHAIRMAN. There is a penalty provided in the oleomargarine act.

Are there any other questions?

Mr. TINCHER. Doctor Campbell, I think you have made quite clear to the committee just what the situation is.

Mr. VOIGT. Doctor Campbell, suppose the bill now before us should become a law and a man should ship butter containing less than 80 per cent butter fat, under what law would you then prosecute him?

Doctor CAMPBELL. If the action were by us, and that is the only action I know of that would be taken, it would be under the terms of the food and drugs act.

STATEMENT OF DR. C. W. LARSON, CHIEF OF THE DAIRY DIVISION, BUREAU OF ANIMAL INDUSTRY, DEPARTMENT OF AGRICULTURE.

The CHAIRMAN. Doctor Larson, there have been some questions asked about the percentage of moisture in butter. Can you tell us about that?

Mr. TEN EYCK. Doctor Larson, what I would like to have you state for the benefit of the committee is why 80 per cent butter fat is the proper amount. I think we ought to be very careful that we do not ask for a higher percentage of butter fat than is proper to embody in a law or have a lower amount, and I think the committee ought to be well informed on that point before we adopt a definite percentage.

Doctor LARSON. In the manufacture of food products, it seems to me, there are two factors that operate in determining the limits; one is the consumer and the other the practicability of producing that product. From the standpoint of the consumer, the more butter fat there is in the product, the better it is. From the standpoint of the manufacturer, the more butter fat there is in it, so long as it makes a more salable product, it is to his advantage; but from the standpoint of the manufacturer, it must be so defined that the product can be made generally without violation, and it is my understanding that the 82½ per cent provision has not been enforced in many States because there would be so many violations in the regular processes of making butter.

Mr. ASWELL. I understood Mr. Ten Eyck to ask you why 80 per cent is necessary.

Doctor LARSON. Yes, sir; and, Mr. Aswell, I am trying to give the limit or the reasons why we should have 80 per cent as the standard.

Mr. HAYS. Why we should not have 80 per cent?

Doctor LARSON. No; why we should have 80 per cent.

Mr. HAYS. If you will pardon a question there, the record shows that Missouri has a law fixing 82½ per cent as the standard. In Missouri we can manufacture butter of not less than 82½ per cent and get by under the State law; but, perhaps, we ship a good deal of our butter to another market, and what I am interested in is knowing whether this law would discriminate against Missouri and the other two States that have that standard. Our people would be punishable in Missouri if they manufactured butter under 82½ per cent.

Doctor LARSON. That is right.

Mr. HAYS. And yet they could not compete with other States, perhaps, that would be permitted under the Federal law to manufacture butter at 80 per cent. Would not that operate as a discrimination against Missouri in shipping butter out of the State?

Doctor LARSON. In a way, it would; that is to say, it would be privileged to have more butter fat in their butter than they would in the other States.

Mr. HAYS. In other words, the butter we ship to the Chicago market, which under the Federal statute would be allowable at 80 per cent, we could not ship, because we would not be permitted to manufacture it in our own State.

Doctor LARSON. That is right if the requirement of 82½ per cent were enforced.

Mr. CLARKE. You have that law so as to be sure your butter is the best?

Mr. TINCHER. It outsells any other butter on the market now.

Mr. HAYS. Yes; everybody knows that Missouri butter is the best.

Mr. ASWELL. Would not butter manufacturers in States outside of Missouri ship into Missouri and compete with you and undersell you?

Mr. HAYS. That is exactly what I am talking about—not shipping outside of the State but shipping into the State.

Mr. TINCHER. What Mr. Ten Eyck wanted to know was why it was necessary to have 80 per cent as the standard.

Mr. TEN EYCK. What is the reason they have settled on 80 per cent? It may be too high or it may be too low, and I would like to know the real reason, and to make the record correct as regards the different States we have just checked it over and we have found that 80 per cent butter fat is required by statute in 12 States and 82½ per cent is required by State statute and regulation in 6 States, and there are regulations relating to departmental ruling providing for 82½ per cent in 17 States.

Doctor LARSON. Referring again to your question, Mr. Ten Eyck, as to why the limit is fixed at 80 per cent, I have already said that the food value is a consideration, the quality of the product, and the other is the practical proposition of making it in the factories. If by the regular processes of making butter, butter is produced that contains less than 82½ per cent, then it would not be right to have a law fixing butter that contained 82½ per cent as criminal butter, so the manufacturer is considered in the law; in other words, 82½ per cent is often violated in the regular processes of making butter at the present time.

Mr. MCLAUGHLIN. of Michigan I have been told by those who fixed this 16 per cent of moisture and by those who have charge of enforcing the law that butter when honestly made does not contain more than 13 or 14 per cent of moisture, but that it would be a pretty difficult proposition to prosecute anyone who did put a little more than 13 or 14 per cent and, therefore, it was put at 16 per cent in order to be safe, but that any more than 13 or 14 per cent is added deliberately for the purpose of increasing the weight.

Mr. CLARKE. I would not say added, but left in, in the process of manufacture.

Mr. MCLAUGHLIN of Michigan. Yes; but that 13 or 14 per cent of moisture is all that ought to be left in in making butter honestly, but to be safe they fixed the limit at 16 per cent and prosecute all who come up to that or exceed it.

Doctor LARSON. I do not believe that that is the fact.

Mr. MCLAUGHLIN of Michigan. I may be wrong about it, but I have been told that.

Doctor LARSON. I do believe it is possible to incorporate abnormal amounts of water. It is possible to do either way, leave a large amount in or introduce the water.

Mr. TEN EYCK. Can you not introduce milk into butter after the butter has been made?

Doctor LARSON. Yes, but that would be equivalent to adding water.

Mr. MCLAUGHLIN of Michigan. Is it not true that it is an improper method or inexcusably careless if more than 13 or 14 per cent of water remains in

butter and that it is not necessary or proper to have more than 13 or 14 per cent of moisture?

Doctor LARSON. It is possible, if you know how and have proper equipment, to make butter that will always contain less than 16 per cent water, but in the ordinary processes of making it, men do manufacture butter, unintentionally containing over 16 per cent. I can give you an actual case that happened in the State of Pennsylvania where I was located for a number of years. A certain manufacturer called me up on the long distance telephone and told me that a quantity of his butter had been seized in Philadelphia as being adulterated. I knew positively that the man had never known anything about the incorporation of water into butter. He had never studied it, and when I went to his factory I found he had a great quantity containing as high as 17 or 18 per cent of water. He said he had not, as far as he knew, changed his process, but he must have changed his process or the product from which he made his butter had been changed.

Mr. MCLAUGHLIN of Michigan. He had an improper process. I knew of a case where a disgruntled employee deliberately permitted an excess of moisture to appear in the butter or put something in it, and that was the way the proprietor escaped, by showing that it was done without his knowledge and consent and by some one who had it in for him.

Doctor LARSON. That can be done; yes.

Mr. MCLAUGHLIN of Michigan. I do not remember now whom I talked with in regard to the absolute needlessness of more than 13 or 14 per cent of moisture, but I know it was somebody who pretended to know, and I think he did know. Pardon me for differing from you, because I do not want to put his opinion against yours.

Doctor LARSON. I do not think we do differ, except in the statement where you say that if a man ever makes butter with 16 or 17 per cent moisture, or more than 13 or 14 per cent, as you say, he has done it intentionally.

Mr. MCLAUGHLIN of Michigan. Has either done it intentionally or else is pursuing a process that is defective and absolutely inexcusable.

Doctor LARSON. That I am not discussing.

Mr. TEN EYCK. It seems to me there is one other question involved there. I rather agree with your statement as regards the butter manufacturer, but we must consider the thousands and thousands of farms where butter is made on the farm by the farmer's wife and where he may not be in a position to know just how much water is in that butter, and that is the reason why I am so particular to-day to know why they are making it 80 per cent, because I do not want thousands of farmers to be arrested and prosecuted under the pure-food law, when they unintentionally or accidentally leave a little more water in their butter than is necessary, when that butter goes into interstate commerce.

Mr. ASWELL. How would they know exactly how much water was in it?

Mr. TEN EYCK. They would not know, and that is why I want to be sure about it before we as a legislative body legislate against the big individual producing interests in this country.

Mr. TINCHER. The regulation now being 82½ per cent, I do not suppose reducing it to 80 per cent would work any great hardship on the producer. As I understand, it is practically impossible to manufacture butter in any legitimate manner and have more than 16 per cent of moisture in it.

Doctor LARSON. It seldom contains more than 16 per cent, in its usual processes.

Mr. TINCHER. And in all the States that have seen fit to legislate on the subject, none of them has legislated for less than 80 per cent and as many as three of them, and only three by statute, have legislated for 82½ per cent.

Doctor LARSON. That is right.

Mr. TEN EYCK. The difference, Mr. Tincher, is that those States are close to the individuals and they can be somewhat lenient, but when you put a Federal law on the statute books and some poor individual is caught out in the State of Kansas for unintentionally doing something unlawful and brought before the Federal court and prosecuted, his farm is gone before he can prove himself innocent.

Mr. TINCHER. Is it your theory we ought to reduce it below 80 per cent?

Mr. TEN EYCK. I have not any theory about it. This is a new thing that has come up here very quickly, and I say before we put upon the statute books a law demanding 80 per cent, this committee ought to know more about what they *are doing.*

Mr. TINCHER. This committee never acts without knowing what it is doing.

Mr. TEN EYCK. Well, I simply say that is my idea. I am merely expressing my ideas now, so we will not act too hurriedly, and that is why I asked the gentleman the question I did.

Mr. CLARKE. Coming from a big dairy district, I am free to confess that I am unfamiliar with this proposition, and I think it would be extremely hazardous for us to hastily take any action now. I do think we ought to defer action for a little time until we can have more complete information from those who are actually manufacturing the butter.

The CHAIRMAN. I have certainly no desire to urge unduly speedy action or anything of that kind; I thought it my duty to call this matter to the attention of the committee.

Mr. CLARKE. I think it was very proper for you to do that, and I think then we should take the time to consider the matter thoroughly.

Mr. TINCHER. Is there anyone here opposing the legislation? Let us get a little of that side of the matter so we can be studying about that.

Mr. TEN EYCK. And I suppose it is the chairman's intention to see that the farming industry of the country is heard on this bill before anything is done?

The CHAIRMAN. Oh, yes; we will hear anybody who appears interested in the legislation; but the question now is whether the committee will consider the matter.

STATEMENT OF MR. J. S. ABBOTT, SECRETARY OF THE INSTITUTE OF OLEOMARGARINE MANUFACTURERS.

THE CHAIRMAN. Are you going to talk on oleomargarine?

MR. ABBOTT. No, sir.

THE CHAIRMAN. That has nothing to do with this bill. If you inject oleomargarine into this matter we might as well quit right now, so far as I am concerned.

MR. ABBOTT. It appears that oleomargarine has had quite a lot to do with butter in the legislation.

THE CHAIRMAN. Oleomargarine is not butter, and if you are going to talk about oleomargarine, that is something that has nothing to do with this bill because nobody contends that oleomargarine is butter.

MR. ABBOTT. Mr. Chairman——

MR. ASWELL (interposing). Just a minute, Mr. Chairman. Is not this an amendment to the oleomargarine act?

THE CHAIRMAN. It is an amendment simply to the section that deals with butter.

MR. ASWELL. But it does deal with the oleomargarine act?

The CHAIRMAN. I am not bringing that in.

Mr. ASWELL. I am not sure what you have in mind, but I think the committee has a right to discuss it.

The CHAIRMAN. The committee can discuss anything it wants, so far as that goes.

Mr. ASWELL. I think the gentleman ought to be heard.

The CHAIRMAN. But we should not discuss a matter now that is not germane to this bill.

Mr. ASWELL. I would like to know when we got so strict about what we should discuss here.

Mr. TINCHER. Are you going to discuss something that is germane to this bill?

Mr. ABBOTT. Yes, sir. If you please, Mr. Chairman, this is an amendment to the oleomargarine law. If the oleomargarine law is amended——

The CHAIRMAN (interposing). It is an amendment to the section that deals with butter?

Mr. ABBOTT. Yes, sir; but it is my position here, without having had time to confer with the people who employ me, that they should have an opportunity to be heard. Their product comes in competition with the product you are dealing with, and in that sense or for that reason we think we ought to be heard on this bill. We respectfully submit that we can not be heard to-day. I did not know about this until about 10 minutes after 10 o'clock.

Mr. TINCHER. Let us see the theory on which you think you are interested. Oleomargarine coming in competition with butter, the higher we keep the standard of butter the better it is, I suppose, for oleomargarine; that is, if we put the standard up to 86 per cent butter fat, you would have less competition from butter than you have now.

Mr. ABBOTT. I would not put it exactly in that way, Mr. Congressman. It is of interest to us that the consumer has all the protection he is entitled to when he goes to buy butter and when he goes to buy oleomargarine. Now, whether or not this bill gives the consumer the protection he is entitled to and whether or not it gives the producer the protection he is entitled to, can not be answered here impromptu or offhand by the butter crowd or by us. A good many years ago your honorable body enacted a statutory definition of butter and a standard. The standard enacted was 83 per cent fat. A little later, in 1906, the Standards Committee, operating under the appointment of the United States Secretary of Agriculture, adopted a standard of 82½ per cent butter fat. Your first statutory standard was 83 per cent fat, your next standard under authority of the Secretary was 82½ per cent fat.

That went along for a good many years and the States took action on it one way or the other, as you have just heard, and I think I compiled most of those figures when I was in the Department of Agriculture myself. They worked under that as well as they could for a long time, and the standards committee took the subject up again to make a reinvestigation, and did make a new investigation to determine what fat content butter should have in the light of modern methods of butter making. After two or three years of consideration of that subject by that standards committee, of which I was a member at that time, being also the secretary of the committee, there were numerous hearings held all over the country and the butter people were given an opportunity to be heard on what they thought the standard should be. That committee as recently as 1919 or the latter part of 1918 reaffirmed the old definition of 82½ per cent of fat. Now, so much for the history of the fat in butter, and that is the smallest part of the butter and the least important part of this proposition before you. There are a good many other things connected with butter making that are ten times more important to the consumer or the producer than this. Nobody knows, apparently, here, and you have nobody here to present evidence, as to what is even good commercial practice in butter making, except these standards that have been presented here. Nobody has stated what is good commercial practice in the opinion of these gentlemen here or of myself or of others.

Mr. TINCHER What is your opinion about it?

Mr. ABBOTT. We have expressed our opinion in this 82½ per cent standard. That was our expression of what was good commercial practice, but, mind you, at the same time we did that, the men on that Standards Committee—and they were scientific men, every one of them—realized that we do not know what the standard should be from the standpoint of science. There may be a definite ratio between the moisture content and the fat content that makes for a better product, for a better keeping product, and for a better butter and for better commercial practice and more economical in every sense, but nobody knows what it is. Just before Doctor Alsberg left——

Mr. TINCHER (interposing). Were you a member of this board?

Mr. ABBOTT. Yes, sir.

Mr. TINCHER. Did you help to make the standard of 82½ per cent?

Mr. ABBOTT. Yes, sir.

Mr. TINCHER. And then you quit the Department of Agriculture and went working for the oleomargarine people?

Mr. ABBOTT. Yes, sir; and I am just as much of a farmer as the butter maker. The beef fat and the cottonseed oil and the peanut oil and the salt and the milk and everything else we use in the manufacture of oleomargarine are an American agricultural product, if you please.

The CHAIRMAN. What you want to do is to substitute hog fat and oleo oil for butter fat?

Mr. ABBOTT. This product is in competition with our product and I submit that our people ought to have a chance to be heard in connection with this matter, if you are going to amend this law, not only with respect to the butter fat content and the moisture content, but with respect to the coloring matter and what butter shall be made of and how it shall be made, etc., according to our present knowledge of the business.

Mr. VOIGT. Can you now see any objection to this bill?

Mr. ABBOTT. My opinion on the bill is on record. I am on record for 82½ per cent as the standard.

Mr. TINCHER. That was when you were with the Department of Agriculture.

Mr. ABBOTT. That was three years ago.

Mr. ASWELL. Do you still believe that?

Mr. VOIGT. I want to know what your idea is now. What is your objection to this bill now?

Mr. ABBOTT. Mr. Congressman, I do not think you ought to make me give my personal views on this, as long as I am representing a body of people who are in another business, but I do not mind saying that I think 82½ per cent for a standard is right. Now, mind you, in commercial practice there will be little butter makers who will sometimes run below 82½ per cent fat, say 81, what are you going to do with them if you had an 82½ per cent standard? You would say as a matter of tolerance and as a matter of justice, "we will let him go and will not prosecute on that." This honorable body has put itself on record as in favor of tolerances. If you put the standard at 80 per cent, then there will be sold all over this country butter with 78½ per cent or 79 per cent and nobody will ever be prosecuted for doing that because they will submit that that is a reasonable tolerance.

The CHAIRMAN. That is what is being done now, is it not?

Mr. ABBOTT. Yes; with 82½ per cent, they have adopted a reasonable tolerance in actual practice, so I understand, in the Bureau of Chemistry, and they do not prosecute a man if it runs 81½ per cent or 82 per cent.

Mr. TINCHER. Let me see if I understand this matter. The Massachusetts law had a good deal to do with agitating this subject, and the Massachusetts law will take effect about the 1st of August and will provide for 82½ per cent. That would bar any butter being shipped into the State of Massachusetts with less than 82½ per cent butter fat, and if that did bar a lot of butter manufactured by the constituents of my friend Ten Eyck or my friend Clarke up in New York from going into Massachusetts naturally that would make a better market for oleomargarine in Massachusetts, would it not?

Mr. ABBOTT. The higher the price of butter and the lower the price of oleomargarine, of course, the more oleomargarine we can sell; that is true, but those are not the only factors that affect the consumption of oleomargarine. There are scores of other factors that affect the consumption of oleomargarine.

Mr. CLARKE. You have stated to the committee that it was a very scientific body that made up the standard here.

Mr. ABBOTT. Yes, sir.

Mr. CLARKE. Do you not think that in the consideration and determination of these standards, possibly due to the fact that the committee was so made up of scientific men, you may have lost too much the viewpoint of the ordinary individual farmers who manufacture butter and who have not the ability or knowledge or the facilities sometimes for making butter of that standard?

Mr. ABBOTT. That is quite possible. I told you that we realized that our standard did not have a scientiific basis. We do not know from colloidal chemistry enough about that to know what the ratio of the moisture content to the fat content should be in order to make the best product possible according to the best commercial practice, but that fact ought to be established, if it can be established, before there is a Federal statutory standard on the product, in my judgment.

Mr. ASWELL. The record this morning shows that most of the States have statutes or regulations already established. What is the idea of wanting to interfere with the States? Why not let them go on and attend to their own business? We will be ultimately regulating everything and deciding on how many cows a man will be allowed to keep on his farm.

Mr. ABBOTT. Of course, that is a matter for your own consideration.

Mr. TINCHER. Would that suggestion involve the repeal of the pure food and drugs act?

Mr. ASWELL. No, sir. The pure food and drugs act is all right as it stands, but these States have their own regulations and statutes under the pure food and drugs act.

Mr. TINCHER. But we have a Federal regulation on it now and the question is whether it is correct or not.

Mr. VOIGT. Let me ask you a question right here: If Congress fixes the butterfat content at 85 per cent instead of 80 per cent, the price of butter would go up, would it not?

Mr. ABBOTT. Yes, sir; it would, per pound.

Mr. VOIGT. And the price of butter then being higher than oleomargarine there would be more reason on the part of the consumer to purchase oleomargarine; and that is the point you are interested in?

Mr. ABBOTT. Other things being equal, that is true. I want to say this much more to you: If you will take the trouble, before passing upon this bill, to get the data that was before the standards committee, that you have heard about,

you will get quite a lot of figures that will be quite interesting to you. I sent out a questionnaire to the State dairy and food commissioners of the several States throughout the country and asked them to go out and pick up some butter on the market indiscriminately and make an analysis of it and give me the result of the fat content of that butter, and it will be interesting to you to see what the little creameries are doing and what the larger creameries of the country are doing.

Mr. TINCHER. What do you mean by that?

Mr. ABBOTT. I do not propose to give you those figures now.

Mr. CLARKE. How about butter produced by the individual farmer? Have you any record of that?

Mr. ABBOTT. Yes; we had some farm butter, too, and the figures in that compilation will give you some enlightening information. You take the housewives making butter and the little creameries making good, honest-to-God butter all over the country, and look at the figures and the percentage of fat in the butter they make, and then look at the figures on the butter that the larger factories make that have a better control and a more scientific control of the matter.

Mr. TINCHER. What is the percentage in the first case?

Mr. ABBOTT. In general, the fat content is higher and the moisture content is lower in the butter made by the farmer housewife who knows how to make butter and also the little creameries making butter all over the country. The fat content is higher and the water content is lower in that butter.

Mr. MCLAUGHLIN of Michigan. The butter of the big manufacturers, then, has less butter fat and more water in it?

Mr. ABBOTT. In general, I said.

Mr. ASWELL. I think that is true.

Mr. ABBOTT. More than that, gentlemen, if you will take the trouble to go to the butter people, here in the Department of Agriculture, who handle butter—I do not mind saying that I heard Doctor Thompson say over there one day that they could put moisture into the butter and make it firm and nice and have a high percentage of moisture, too. You can take the books on butter making and the teachings of butter making and the magazines all over this country and read them and for years back you will see there has been a progressive teaching of the incorporation of water, or else of not taking the water out when they churn it, right up to the point of 16 per cent moisture. Whether it is good commercial practice to do that or not, I do not know.

Mr. TEN EYCK. You said that the farmer's butter had more fat in it than the creamery butter. Which butter brings the biggest price in the market as a general rule, the farmer's butter or the creamery butter?

Mr. ABBOTT. The creamery butter.

Mr. TEN EYCK. In other words, the consumer or dealer pays more for that water in the creamery butter than they do for butter fat in the farmer's butter?

Mr. ABBOTT. As I said a moment ago, the fat content and the water content are the least important factors in the price of butter. You know that.

Mr. MCLAUGHLIN of Michigan. There are other things involved..

Mr. ASWELL. Mr. Abbott, it is now nearly 12 o'clock and you said you were not ready to testify. What request have you to make?

Mr. ABBOTT. If you are going to consider this bill seriously, if you are going to amend the oleomargarine law, or if you are going to change this definition and standard for butter or act on it at all, we think there should be a hearing on it and that our people should have an opportunity to be heard on whatever angles they want to be heard on.

Mr. ASWELL. When would you want to be heard?

The CHAIRMAN. As I understand, you do not care to discuss the bill now, but you request that your people be given an opportunity to be heard; is that it?

Mr. ABBOTT. Yes, sir; I want them to have an opportunity to be heard.

Mr. ASWELL. When?

Mr. ABBOTT. At your pleasure, in a reasonable length of time, enough time to get them here.

Mr. ASWELL. How long will it take to get them here?

Mr. ABBOTT. I do not know. We can get them here as soon as the butter people can get here, I imagine.

Mr. ASWELL. They are already here.

Mr. MCLAUGHLIN of Michigan. I can not see how your people are in any way properly interested in this proposition. You are not making butter and you are not selling butter. You try to make your product resemble butter and do everything to approach the appearance of butter, and the nearer you

approach it the greater the fraud. There is not any question about that, and the more the people are deceived the nearer you approach the appearance of butter. I can not see how you are interested in the welfare of the butter maker at all.

Mr. ABBOTT. I beg to differ with you. I do not think it is a fraud for us to make a product as near like butter in every proper respect as we can.

Mr. MCLAUGHLIN of Michigan. When it is made to represent butter, so that people will think they are buying butter——

Mr. ABBOTT. That is a different proposition.

Mr. MCLAUGHLIN of Michigan (continuing). It may be something else besides fraud, but you will have to find the word to describe it, because I can not.

Mr. ABBOTT. If I sell you oleomargarine and tell you what it is made of and you know what it is, it does not make any difference how nearly it approaches the appearance of butter in every proper respect. It is not a fraud.

Mr. RAINEY. And you sell it as oleomargarine?

Mr. ABBOTT. We do.

Mr. TINCHER. I think in giving his views to the committee, while I do not know a great deal about butter, in my judgment you are a very good witness for the legislation, and I think the committee ought to hear all such witnesses.

Mr. ABBOTT. Mr. Chairman, if you will permit me on that little compliment from the gentlemen, I am as much in favor of real, fair, and square legislation with respect to this product and oleomargarine and every other product as any man in this world, and there is not anybody who can point to a word of act that I have ever said or done that would indicate that I am not for a square deal with reference to the production of any article of food.

Mr. MCLAUGHLIN of Michigan. I would not say a word reflecting on you whatever.

Mr. ABBOTT. No; but you reflected on our product.

Mr. MCLAUGHLIN of Michigan. But I can not escape the feeling that the people making oleomargarine and representing that industry will not come in here in the interest of the butter makers.

Mr. TINCHER. With the Massachusetts law going into effect, which it is claimed by the department will have a tendency to injure the real, honest-to-God butter maker, and with the oleomargarine people protesting against our passing this law, I still insist that I think the gentleman has made a good witness for the legislation.

Mr. ABBOTT. Mr. Chairman, I do not think, myself, it is in the interest of the consumer for butter to be artificially colored when it is an inferior product. I can not go to the market down here and buy a pound of butter and know what I am getting until I taste it or smell it, because every pound looks alike. You can take the poorest, commonest, rottenest butter, made from rotten cream or from renovated cream, and color it yellow and stamp it creamery butter or fancy creamery butter, and that is what is happening to-day. Now, butter is the only article of food that can be artificially colored without any statement of the fact that it has been artificially colored. There is not another article in the market to-day that can do that.

Mr. MCLAUGHLIN of Michigan. But it is still butter.

Mr. ABBOTT. It is artificially colored butter.

The CHAIRMAN. If there are no further questions?

(The committee thereupon proceeded to the consideration of executive business, after which it adjourned until Wednesday, June 21, 1922, at 9 o'clock a. m.)

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Wednesday, June 21, 1922.

The committee met at 9 o'clock a. m., Hon Gilbert N. Haugen (chairman) presiding.

The CHAIRMAN. The committee will come to order. We will hear you, Mr. Loomis.

STATEMENT OF MR. A. M. LOOMIS, 630 LOUISIANA AVENUE, WASHINGTON, D. C., SECRETARY OF THE NATIONAL DAIRY UNION.

The CHAIRMAN. Will you give your full name, your address, and who you appear for, Mr. Loomis?

Mr. LOOMIS. A. M. Loomis; 630 Louisiana Avenue, Washington, D. C. Appearing as secretary of the National Dairy Union. Mr. Chairman, I have sent out copies of this bill to the directors of the National Dairy Union, an organization which represents the creameries particularly, and generally those people interested in the dairy industry in the United States. I have two telegrams in reply to the letter which I sent accompanying the bill. One is from Mr. J. R. Morley, of Owatonna, Minn. He is a director of the National Dairy Union, and has been familiar with this problem for many years. He is secretary and manager of the Cooperative Dairy Association of Minnesota, one of the successful dairy marketing organizations, as well as a successful creamery operator. His telegram is as follows [reading]:

OWATONNA, MINN., *June 19, 1922.*

A. M. LOOMIS,
Washington, D. C.:

The Haugen bill, H. R. 12053, defines the composition of butter exactly as desired by creamery and dairy interests in the Northwest. Eighty per cent of milk fat and not more than 16 per cent water is a perfect composition for the best butter, will be to the advantage of producer and manufacturer if enacted into law, and clear up the possibility of misunderstandings of present ruling of the Department of Agriculture.

NATIONAL DAIRY UNION,
J. R. MORLEY, *Director.*

The other telegram is from Samuel Schlosser, a butter manufacturer of Indiana.

Mr. PURNELL. He is in my district.

Mr. LOOMIS. He has been down here and has had several conferences with members of this committee and other members, so you may know that he is a practical and experienced butter man. He is also a member of the National Creamery Butter Manufacturers' Association, and a member and officer of the Indiana Creamery Butter Manufacturers' Association. His telegram is as follows:

PLYMOUTH, IND., *June 20, 1922.*

A. M. LOOMIS,
Washington, D. C.:

Answering your inquiry why 80 instead of some other percentage? First, it is fair to both producer and consumer; second, all creameries have been operating on a 16 per cent moisture basis for a long time, which results in approximately 80 per cent fat, so all butter makers know how to comply with this standard; consequently its adoption will cause no confusion to the industry. We hope for the early passage of the bill.

SAMUEL SCHLOSSER.

THE NATIONAL DAIRY UNION,
Lansing, Mich., June 19, 1922.

Mr. A. M. LOOMIS,
Secretary National Dairy Union, Washington, D. C.

DEAR MR. LOOMIS: I am in receipt of your communication of the 17th, inclosing copy of bill now being considered by the Committee of Agriculture.

Personally I have felt for a long time that we should have a definition of butter enacted into law. In my judgment such definition should provide for 80 per cent of fat and not more than 16 per cent water. I can not see where this would work an injustice to anyone. I think it would serve as a standard for the different States to conform to.

Very truly yours,

N. P. HULL, *President.*

The CHAIRMAN. Now, Mr. Loomis, would you care to express an opinion on the single or double standard? It has been requested that we have a single standard requiring 80 per cent butter fat, and say nothing about moisture. Have you any expression on that from the dairy people?

Mr. LOOMIS. I have no expression from the dairy people, and my opinion on that matter is of very little interest, excepting that I fear the reaction of an act of Congress now which does not mention the 16 per cent of water maximum on the court actions which will follow when the Internal Revenue Department at-

tempts to enforce their 16 per cent ruling. In the case of people who are fighting the 16 per cent ruling, in the cases that have been brought in court, if they can show to a court and jury that here is Congress, which has enacted a butter statute without mentioning the 16 per cent moisture, it seems to me it is giving them an added advantage in contesting these cases. Now, maybe, they ought to have this advantage; I don't know.

The CHAIRMAN. There could not be any more than 16 per cent of moisture if they put in 3 per cent salt and 1 per cent casein. As I understand it, less than 2 per cent of the butter manufactured is unsalted.

Mr. LOOMIS. I do not have those figures, Mr. Chairman, and as I say, I am not a practical butter man, and I have no judgment of my own to offer on it.

The CHAIRMAN. There seems to be a little controversy here between the creamery people as to whether there should be a double or a single standard. That has been a question for a long time, and as you know, we have had more trouble with this moisture proposition than we have had about any other proposition here. We have been held up all the time on the question of a little excess moisture. If we adopt a single standard requiring 80 per cent of butter fat, we would eliminate the whole question.

Mr. LOOMIS. My sole idea in the matter is to preserve and protect that statute.

The CHAIRMAN. You do not care to express any opinion on that then, do you, Mr. Loomis? You have no expression on that at all?

Mr. LOOMIS. Not at all.

The CHAIRMAN. Just one other question. Do you suggest including the enforcement of the act over in the Treasury Department also? Should that be included? Should the definition apply there?

Mr. LOOMIS. That is my judgment, that it should apply; yes, sir.

The CHAIRMAN. As well as to the Department of Agriculture?

Mr. LOOMIS. As well as to the Department of Agriculture, if not to the exclusion of the Department of Agriculture. And may I say just one word further; that that is due to the fact that the tax enforcement by the internal revenue covers all butter and not only butter in interstate commerce.

The CHAIRMAN. Thank you, Mr. Loomis. Now we will hear you, Mr. Reid.

STATEMENT OF MR. E. B. REID, 838 MUNSEY BUILDING, WASHINGTON, D. C., REPRESENTING THE AMERICAN FARM BUREAU FEDERATION.

The CHAIRMAN. Will you state your full name and your connection, Mr. Reid?

Mr. REID. E. B. Reid; representing the American Farm Bureau Federation. Mr. E. B. Heaton is in charge of the dairy work of the American Farm Bureau Federation, so as soon as I heard of your bill I telegraphed to Mr. Heaton to give us a word about it, and to let us know where his department stood on this matter. This morning I received the following telegram [reading]:

CHICAGO, ILL., *June 20, 1922.*

E. B. REID,
American Farm Bureau Federation, Washington, D. C.

This department is heartily in favor of making the standard of butter fat in butter 80 per cent. Questions, however, necessity of also having the 16 per cent moisture limitation. The enforcement of latter may do injury to the cooperative and small privately owned creameries. Just as the 82½ butter fat standard works to disadvantage of centralized creameries with sour cream, so a combination of 16 per cent moisture and 80 per cent fat would be to disadvantage of cooperative creameries with sweet cream and the necessity for very little salt. A single standard would be the fairest to all.

E. B. HEATON.

That is a single standard of 80 per cent butter fat.

The CHAIRMAN. The double standard, not less than 80 per cent butter fat, and not more than 16 per cent moisture?

Mr. REID. No, not the double standard; one standard.

Mr. TINCHER. They favor the single standard?

Mr. REID. Yes.

The CHAIRMAN. Are there any others here who desire to be heard?

STATEMENT OF J. J. FARRELL, SECRETARY OF THE DAIRY PRODUCTS ASSOCIATION OF THE NORTHWEST; SECRETARY OF THE NATIONAL DAIRY PRODUCTS COMMITTEE, WASHINGTON D. C.

The CHAIRMAN. Mr. Farrell, will you state your full name and your connection?

Mr. FARRELL. J. J. Farrell, secretary of the Dairy Products Association of the Northwest; also secretary of the National Dairy Products Committee. My home is in St. Paul, Minn.

Mr. MCLAUGHLIN of Michigan. How are your associations made up, Mr. Farrell?

Mr. FARRELL. Of dairy manufacturers largely.

Mr. THOMPSON. Do your associations include the Northwestern Ohio Association?

Mr. FARRELL. We have a small organization in Ohio, a similar organization.

Mr. THOMPSON. Your organizations include those?

Mr. FARRELL. Yes.

Mr. THOMPSON. You are speaking for those now?

Mr. FARRELL. I am speaking for those that I happened to get telegrams from yesterday afternoon. I happened to be here on some other business yesterday morning and knew of this measure. I am speaking largely from the representation of our association in the Northwest, and as a butter maker myself.

Mr. THOMPSON. Do you operate a creamery?

Mr. FARRELL. I operate a creamery; yes sir.

Mr. THOMPSON. A very large one, is it?

Mr. FARRELL. No; mine has always been small. Now, first, Mr. Chairman, I have some telegrams which I have received, and which I would like to present.

Mr. THOMPSON. What is the nature of these telegrams?

Mr. FARRELL. On this particular subject.

The CHAIRMAN. Do you want to hand them in or do you want to read them?

Mr. FARRELL. Whichever the committee wishes.

Mr. MCLAUGHLIN of Michigan. I would suggest that you read them so we may know now what they contain. The committee may wish to take action soon, and we would like to know what these telegrams contain.

The CHAIRMAN. Very well, Mr. Farrell, you may read them.

Mr. FARRELL. The first one I wish to read is from Mr. Wentworth, as follows [reading]:

ALGONA, IOWA, *June 21, 1922.*

J. J. FARRELL,
National Dairy Products Committee, Washington, D. C.

Urge for us single standard on butter 80 per cent fat. Professor Mortensen and C. R. Conway, Iowa Buttermakers Association, agreed. Each have wired Haugen they suggest higher standard on unsalted. Iowa Cooperative Creameries would suffer severely under double standard.

W. A. WENTWORTH, *Secretary.*

Mr. THOMPSON. What do you mean by a double standard?

Mr. FARRELL. Sixteen per cent moisture and 82 per cent fat, or 80 per cent, whichever is in the bill.

Mr. THOMPSON. And what does the telegram which you have just read, urge? Just one standard?

Mr. FARRELL. Yes; they urge one standard, one single butterfat standard.

Mr. ASWELL. How would the dairy manufacturers suffer if they had the double standard?

Mr. FARRELL. Because of the inability to control the moisture content of butter, I assume.

Mr. VOIGT. Right there let me ask you a question. Isn't it a very easy matter for a dairyman, a butter manufacturer, to determine the amount of moisture in butter by means of instruments which he has?

Mr. FARRELL. Well, at this season of the year it is not an easy matter.

Mr. VOIGT. Well, let us get this clear. Does not a butter maker in a creamery have a scientific instrument with which he can determine the amount of moisture in butter?

Mr. FARRELL. He has what is called a moisture test that varies with every sample that is taken. For instance, if we churn a churning of butter to-day, and there were fifteen 16-pound packages in that churning, and our churn

average will give us 15½ per cent on test before we pack it into these packages, we can retest those tubs afterwards and it will be a miracle if we find two tubs that will test alike, that will test the same as in the churn.

Mr. VOIGT. Well, the tubs may not test alike, but the instrument with which the test is made is scientifically accurate, is it not?

Mr. FARRELL. Well, as near as samples may be taken of a product that is not constant in composition. It is just a weight problem, and a sample problem.

Mr. VOIGT. Well, when the butter maker makes butter he has an instrument at hand by which he can, without any trouble, positively determine whether he has over 16 per cent moisture in the butter?

Mr. FARRELL. Yes. He is supposed to have that at hand, and supposed to get it as near right as he can.

Mr. VOIGT. Well now, if he has the ready means at hand to determine scientifically the water content, how can it be a hardship on him to limit him to 16 per cent?

Mr. FARRELL. If you enact the double standard here of butter fat and moisture, you can legalize the internal-revenue rulings or regulations, and make such butter as may contain, inadvertently on the part of the manufacturer, 16 per cent or more of moisture, taxable at 10 cents a pound, and that applies to farmers as well as creameries.

Mr. VOIGT. Let me cite a case to you. I had a case about two months ago where a butter company in my district shipped a consignment of butter indirectly to Philadelphia. The butter was tested there by Federal agents, and was found to run anywhere from over 16 to 18 per cent moisture, and these people had to pay this penalty of 10 cents a pound on that butter. Well now, is that not right?

Mr. FARRELL. If you are going to enact this bill into law and leave it an 80 per cent single standard it does not interfere with the adulterated butter act nor with the internal revenue regulation, but it does do this to the butter business of this country. You have sewed them up both coming and going by an act of Congress making a hard and fast standard for a food product that fluctuates in composition.

Mr. VOIGT. My understanding is that if a man ships butter now which contains less than 80 per cent fat that the Government will prosecute him?

Mr. FARRELL. It will seize the butter, and there are three provisions under which you can operate. One is, you can have it released under bond. The other is, if you do not wish it released it will be advertised for sale and sold by the Government and the proceeds turned into the Treasury, or they will destroy it by fire.

Mr. VOIGT. Then if a man does ship butter that does contain less than 80 per cent, the Government will proceed either against him or against his butter?

Mr. FARRELL. Yes; if they happen to find it.

Mr. VOIGT. Now, if a man ships butter which has more than 16 per cent moisture in it, the Government will also proceed against him or his butter.

Mr. FARRELL. Yes, sir; under the internal revenue regulations.

Mr. ASWELL. Is that not right?

Mr. VOIGT. I think it is.

Mr. FARRELL. Yes.

Mr. TEN EYCK. What is the use of the bill if that is the case?

Mr. FARRELL. What is the use of the double standard?

Mr. TEN EYCK. If it is all true as you said, Mr. Voigt, what are we going to accomplish more by this bill?

Mr. VOIGT. There is the question. While the Government, as I understand it, does proceed against butter containing less than 80 per cent fat or more than 16 per cent moisture, there seems to be some question in the law as to whether the Government actually has the power.

Mr. ASWELL. Well, does it proceed anyway?

Mr. VOIGT. It does proceed.

Mr. ASWELL. Then it must have the power.

Mr. VOIGT. Just a minute. Let me explain. The Government does proceed, but if the Government proceeds under the pure food law, for instance, the man that has shipped that butter is entitled to a jury trial under the present law, and he can go in and litigate the question before a jury as to whether he is actually putting out a fraudulent product, and so forth. In other words, he has got an opportunity to escape before a jury. But what is desired now is to pass a hard and fast rule which he can not get away from.

Mr. TEN EYCK. In other words, as I understand it, this takes away from the individual farmer the right of trial by jury, is that so?

Mr. VOIGT. No; it does not. It sets a definite standard.

Mr. TEN EYCK. Well, you mentioned the fact that if this bill passed, that this would be a definite fact, and the right of trial by jury would be eliminated.

Mr. VOIGT. No; I did not say that.

Mr. MCLAUGHLIN of Michigan. It does not take away the right of trial by jury, but here is a standard fixed hard and fast that controls the court, and it does not permit the court or the jury, either one, to exercise any discretion there.

Mr. THOMPSON. How is this standard being fixed by law?

Mr. MCLAUGHLIN of Michigan. It appears to be fixed by law now.

Mr. TEN EYCK. What is the difference in the penalty between the present ruling and the pending bill, if passed?

Mr. VOIGT. I do not think there is any difference.

Mr. MCLAUGHLIN of Michigan. No.

The CHAIRMAN. We do not deal with the penalty.

Mr. THOMPSON. This is a bill to make law out of a ruling. Is not that the whole story in a nutshell?

The CHAIRMAN. Yes.

Mr. ASWELL. Well, is not the ruling established now?

The CHAIRMAN. Well, you give the department here the power to fix the rule.

Mr. ASWELL. Have you not established it?

The CHAIRMAN. When you define it in the law that settles the question.

Mr. ASWELL. Well, hasn't it already been established by the department?

The CHAIRMAN. Why, they have established a standard of 82½ per cent, and they are enforcing at 80 per cent.

Mr. ASWELL. The standard is established at 82½ per cent and they are enforcing at 80 per cent?

The CHAIRMAN. Yes.

Mr. ASWELL. That would be just as much a law as this is when it is enacted for all practical purposes.

The CHAIRMAN. The rulings of the department are as binding as this would be when it was enacted.

Mr. VOIGT. May I answer that, Mr. Aswell. There is a nice shade of difference here. The pure food law provides that if a man should put out a deleterious product or a product to which has been added any substance which is not as good as the article ought to be, etc., that then the article shall be considered adulterated within the meaning of that law. Now, that law does not say that butter containing more than 16 per cent moisture is an adulterated product.

Mr. ASWELL. But has not the department said that?

Mr. VOIGT. The department says so, but the department says so because universal experience has shown that good butter should not contain over 16 per cent moisture.

Mr. ASWELL. Well, the department has said that.

Mr. VOIGT. Yes, the department has said that, but that department ruling has not the force of law.

Mr. ASWELL. Can not they proceed and enforce it?

Mr. VOIGT. If a man does ship butter containing 18 per cent moisture, you would have to prosecute that man for putting into interstate commerce an adulterated food product.

Mr. ASWELL. And would not that be the effect of this law?

Mr. VOIGT. Now wait a minute. When that man asks for a jury trial and he gets before the jury, then it is for the jury to determine whether under the terms of the pure food and drugs act this 18 per cent does make an adulterated food product out of that butter.

Mr. ASWELL. Can not that be controlled by the rule of the department on that particular point?

Mr. VOIGT. It has not the force of law. The jury might look at it this way: "Well, this man got the 18 per cent in there through no fault of his own." Or he might have some explanation to make.

Mr. ASWELL. Could not the jury say the same thing under this bill if it should be enacted?

Mr. VOIGT. No; the jury could not say the same thing, because this act makes him liable if he has got over 16 per cent of moisture.

Mr. ASWELL. Regardless of whether it is intentional on his part or not?

Mr. VOIGT. Yes; regardless of whether it is intentional on his part or not, because he has got it absolutely within his power when he makes that butter. The tendency is now on the part of some men who manufacture butter to get just as much moisture in it as the trade will bear.

Mr. FARRELL. No; I beg your pardon; as the moisture regulation of the Internal Revenue Department allows: not as the trade will bear.

Mr. VOIGT. Let me say this. I just referred to a case that I have had in my own experience—I do not care to mention any names, but a concern wrote me about it, and I had this matter adjusted for them. They had something like 2,500 pounds of butter that they had made at different factories under their control, and nearly all of this butter ran over 16 per cent moisture. Some of it ran 18 per cent moisture. Now, of course, they were my constituents, and I adjusted the matter to the best of my ability. They paid the penalty, but they got away from some other penalties that were connected with it.

Mr. FARRELL. They paid the stamp tax of 10 cents a pound.

Mr. VOIGT. But I was not convinced that those men were perfectly innocent in that case. My opinion was that they did not use ordinary diligence to keep the excess moisture out.

Mr. FARRELL. They got penalized sufficiently; they paid 10 cents a pound.

Mr. VOIGT. Yes; they paid 10 cents a pound, but how many tubs of butter are there that escape, that are not detected by the Government officials, and where the man who buys the butter gets water for his money instead of butter.

Mr. ASWELL. Now, Mr. Voigt, let me ask you. Under this proposed bill the man who violates the law and gets more moisture in his butter than is specifield is punished regardless of whether it is intentional or not?

Mr. VOIGT. Yes; that is my understanding.

Mr. ASWELL. Now, what effect does that have on the individual small farmer, the man who produces a small quantity of butter and has no way of determining scientifically how much water there is? According to your statement he will be punished just the same, regardless of his ability or inability to get the facts? There will be no consideration of his inability to get the facts?

Mr. VOIGT. Now, let me say right there that I do not think you will find one pound of butter in 10,000 made by a farmer that has 16 per cent of moisture in it.

Mr. ASWELL. Then why do you not bring the others down to the farmers' standard? Bring the others down to it.

Mr. VOIGT. Well, I assume that 99 per cent of all the butter that is sold in the United States contains approximately 16 per cent of moisture.

Mr. FARRELL. Mr. Chairman, may I answer that question which the gentleman has just asked?

The CHAIRMAN. Yes.

Mr. FARRELL. The Internal Revenue Department exempts the farm butter from its regulations when it is known as such.

Mr. ASWELL. Couldn't you do it under this law?

Mr. FARRELL. But under this law it won't have that exemption, will it, if you have a double standard?

The CHAIRMAN. That is for the department to say whether it will enforce the act or not. It is just as much the duty of the department to enforce its ruling as it is the act itself. Now, for instance, the State of Wisconsin and the State of Missouri have each a law that requires 82½ per cent of butter fat, but they have never enforced that law. That is a statute of each of those States.

Mr. TEN EYCK. Mr. Chairman, that is just the point. I have been in communication with a great many farm organizations, and none of them seem to know much about this bill, and none of them are opposed to it. Some of them tell me to use my own judgment, and others tell me that they feel the bill is all right.

Mr. ASWELL. How do they know anything about this bill?

Mr. TEN EYCK. That I do not know. Now, my idea is this, that we have got to be pretty careful if this bill is going to read the farmer into a hard and fast rule, where heretofore, as the gentleman who is testifying has just stated, under the ruling they have exempted him, and also have been able or are in the position to consider the case and act, whether it was intentional or non-intentional. But when we put a hard and fast law on the books, it, to my mind, is going pretty far, and we want to consider it pretty seriously and carefully.

Now, I want to call the gentleman's attention to another thing. Only a week or two ago the Secretary of Agriculture came before this committee and advised us not to make a hard-and-fast rule on the grading of wheat; that he wanted

to leave that to his own department; that he felt that he could do it a great deal better. Now, to-day he comes down and says that he wants to make a hard-and-fast rule on butter. Now, I do not want to see butter made fish of and wheat made fowl of. I think that what we want to do is to treat the farmer in one instance the same as we treat him in the other; and even though my farmers are, from all the information that I can gather from them, rather in favor of this bill. still I want to be sure that they are not going to get the worst of it when the bill once gets on the statute books.

Mr. VOIGT. Mr. Ten Eyck, I do not think you need to have any fears about this 16 per cent. I do not believe that you could go into your home town and buy a pound of butter made by a farmer that contains 16 per cent moisture.

Mr. TEN EYCK. Well, we make a lot of butter on my farm, and we sell a lot of butter; and to be perfectly frank with you, I do not know what the per cent of water in that butter is. All I know is we try to make the best butter that we possibly can, and I consider it A–No. 1 butter, and it is bought as such.

The CHAIRMAN. As you know, the dairy people and everybody interested in dairying for a number of years have been contending for this one thing. They have been at the department time and time again suggesting that the standard be changed to be 80 per cent, to change this ruling, but the department has never made that change, but they have enforced only the 80 per cent butter fat standard.

Now comes this question over here in Massachusetts. They have an 82½ per cent fat standard. They are going to enforce it after 30 days. Butter coming into Massachusetts must be so high in butter-fat content that it would be an embarrassment to anyone who ships butter into that State. Now here are the States of Wisconsin and Missouri. They have this 82½ per cent requirement, but they have never enforced it. It is not being enforced anywhere. The practice is to require 80 per cent. If that is the general practice why should it not be adopted by law? If that is what the department wants, if that is what the dairy people want, and if that is what the consumer wants, why should it not be made a law?

Mr. TEN EYCK. Mr. Chairman, the enactment of this bill will not prevent Massachusetts from still demanding 82½ per cent, and penalizing anyone who sends butter into Massachusetts containing less than 82½ per cent of butter fat. This does not assure us that Massachuetts is going to change her law. Now I want to say this, that if this comes up for a vote to-day, with the information that comes to me from my State, I am going to vote for the 80 per cent, but I do not want to tie it up any further with 16 per cent water.

Mr. THOMPSON. You are, Mr Ten Eyck, in other words, for the single standard?

Mr. TEN EYCK. Yes. I will vote to-day for the single standard from the information that I get from my farmers.

The CHAIRMAN. That seems to be the sentiment of all the representatives of the dairy interests here. Mr. Loomis said he did not care to express an opinion, but was not that the understanding we had from you, Mr. Reid, representing the American Farm Bureau Federation?

Mr. REID. Yes.

The CHAIRMAN. Is that not the understanding we have from you, Mr. Farrell?

Mr. FARRELL. I would much prefer that the department would modify their regulation to 80 per cent, as they are enforcing it, but if we are to have a bureau setting a standard for a food product, a standard fixed by an act of Congress, we can not stand for anything other than a single 80 per cent fat standard.

Mr. TEN EYCK. In other words, you would rather have the department continue on and do what it does with an 80 per cent ruling?

Mr. FARRELL. With the 80 per cent; yes—not 82½ per cent.

Mr. ASWELL. I would like to ask a question for information. I would like to know why there is the demand for an 80 per cent standard of fat and opposition to the 16 per cent moisture. If we are going to make one why not make the other? Why not have both? One is just as important as the other.

The CHAIRMAN. That is for the committee to determine. I think it would simplify matters if you make the single standard.

Mr. ASWELL. Well, why?

The CHAIRMAN. As I have told you. I have spent more time with the department on this one particular thing than I have on anything else.

Mr. ASWELL. You do not want any limitation on moisture at all, according to *your standard?*

The CHAIRMAN. I am perfectly willing to do either thing. I want to defer to the wishes of the dairy poeple. I think it is immaterial, because when you require 80 per cent butter fat that limits the moisture, because the average amount of salt and casein is about 4 per cent, according to the experts here.

Mr. ASWELL. If you can not tell how much water there is, how are you going to tell how much fat there is?

The CHAIRMAN. Well, 80 per cent, the amount of butter fat, from 100 per cent, leaves 20 per cent. Three per cent of salt leaves 17 per cent. And 1 per cent casein leaves 16 per cent. But, generally, it is 4½ per cent salt and casein, so the total would be 84½ per cent.

That leaves only 15½ per cent of moisture. Now, those are the only things they can put into it. You have one-half of 1 per cent to go on. Of course, there is adways the rule of tolerance. I take it there would be about 1 per cent of tolerance, and when you say 80 per cent that means probably about 79 per cent, but you have that leeway of one-half of 1 per cent, and it actually, absolutely confines it to 16 per cent, unless it is unsalted butter, because those are the only things you can put into it. The only things you can put into it are salt, casein, the butter fat, and water. That is what the definition provides.

Mr. VOIGT. Mr. Chairman, will you tell us, if you know, how much unsalted butter there is made in proportion to the total amount?

The CHAIRMAN. I have been told that the unsalted butter is about 2 per cent. Some hotels are serving unsalted butter. Some hotels are serving white instead of colored butter. Some of the best hotels are serving the white butter; they prefer it. Others prefer the unsalted, and it is made to accommodate the trade.

I would like to ask you, Mr. Farrell, how much of the butter manufactured is unsalted?

Mr. FARRELL. I would say not more than 5 per cent of the commercial butter is unsalted butter. That is for table use, you know. We manufacture some for ice-cream purposes that we do not put salt in. Taking it all told I would say that not more than 5 per cent of the butter manufactured, commercial butter and for table use, is unsalted. I do not think it will reach that.

The CHAIRMAN. I understood you to say 2 per cent.

Mr. FARRELL. That is for table use—2 per cent.

Mr. VOIGT. Two per cent for table use?

Mr. FARRELL. Yes.

The CHAIRMAN. Well, I believe we understand you, then. You favor the single standard requiring 80 per cent of butter fat, do you, Mr. Farrell?

Mr. FARRELL. Yes. Now, I have the following telegram from the Missouri Association [reading]:

WILLOW SPRINGS, MO., *June 20, 1922.*

J. J. FARRELL, *Washington, D. C.:*

Wire received. Our association unanimously in favor single fat standard 80 per cent. Would recomment amending bill.

L. N. MOORE.

Mr. ASWELL. Did you get any telegrams favoring both standards or favoring the double standard?

Mr. FARRELL. I have one.

Mr. ASWELL. Where from?

Mr. FARRELL. From Nebraska.

Mr. ASWELL. That is a butter country?

Mr. FARRELL. Yes.

The CHAIRMAN. Who is that from?

Mr. FARRELL. Professor Hecker wired me this morning that they thought they could accept a double standard. It is a sort of personal telegram.

The CHAIRMAN. Who is he?

Mr. FARRELL. Professor Hecker has been professor of dairying out in Nebraska for a number of years, and now he is secretary of an association.

Mr. VOIGT. Do I understand that you telegraphed all of these people?

Mr. FARRELL. No, sir; only the few associations that have wired me. If I should send them all telegrams, I would have to send a thousand or more.

Mr. ASWELL. Did you not ask them their position, giving your opinion, and so on?

Mr. FARRELL. No; I just wired and told them about the bill.

The CHAIRMAN. I have a number of telegrams here that I wish to read. I have one from Mr. Wentworth, and one from Mr. Crowley; they seem to favor the bill. This telegram is from Mr. Wentworth, Des Moines, Iowa [reading]:

"Legislation which will reduce the Federal standard for fat butter to 80 per cent is highly desirable at this time. Your efforts to secure this will be greatly appreciated.

W. A. WENTWORTH.

Mr. ASWELL. Who is he?

The CHAIRMAN. He represents the dairy people in Iowa. Here is another one from him [reading]:

Hon. G. N. HAUGEN,
House Office Building, Washington, D. C.:

Butter standards conference with Professor Mortenson, National Buttermakers' Association, and C. R. Conway, Iowa Buttermakers' Association, develops unanimous opinion favor single standard 80 per cent fat. We urge this to stablize butter industry. Double standard would be hazardous. Possible should adopt higher fat standard for unsalted butter.

W. A. WENTWORTH,
Secretary Iowa Dairy Council.

Then I have two telegrams from Mr. Crowley, as follows [reading]:

DES MOINES, IOWA, *June 19, 1922.*

G. N. HAUGEN,
House of Representatives, Washington, D. C.:

It is my understanding that about the only relief that we can receive at the present time in the Federal ruling of 82½ per cent in butter is by way of legislation. Any efforts which you may use in bringing about this result will be appreciated.

P. W. CROWLEY.

DES MOINES, IOWA, *June 21, 1922.*

Hon. G. N. HAUGEN,
House of Representatives, Washington, D. C.:

We are in favor of single 80 per cent butter-fat standard.

P. W. CROWLEY.

Mr. ASWELL. What does he mean by wanting relief?

Mr. MCLAUGHLIN of Michigan. Well, the percentage now under the ruling of the department is 82½ per cent.

Mr. ASWELL. You say it is not universal.

Mr. MCLAUGHLIN of Michigan. Well, in some instances.

The CHAIRMAN. I have here a telegram from Mr. Morley, as follows [reading]:

OWATONNA, MINN., *June 20, 1922.*

Hon G. N. HAUGEN,
House of Representatives, Washington, D. C.:

Letter and copy of bill received. Am wiring Loomis the desire of the interests in the West. Your standards of composition exactly right. Would urge the passage of the bill to clear up an unworkable ruling.

NATIONAL DAIRY UNION,
J. R. MORLEY, *Director.*

Then I have one from Mr. McKay, who is here and will speak for himself.

Mr. MCLAUGHLIN of Michigan. Mr. Farrell, have you put into the record what you read to me this morning about the contest where many samples of butter were exhibited, samples coming from creameries and passed upon by experts in that contest?

Mr. FARRELL. No.

Mr. MCLAUGHLIN of Michigan. You have not put that into the record yet?

Mr. FARRELL. No, sir.

Mr. MCLAUGHLIN of Michigan. Will you do so?

Mr. FARRELL. Yes, sir; I will be glad to do so. That is why I am opposing the double standard by law.

The CHAIRMAN. Here is a telegram from Mr. Hilman, who is very active in the dairy industry. [Reading:]

WAVERLY, IOWA, *June 20, 1922.*

Hon. GILBERT N. HAUGEN,
House Office Building, Washington, D. C.:

Yours date your butter bill introduced in House 16th double standard of 80 per cent milk fat and 16 per cent water added to requoted laws is just as it should be. Do not permit any change of amendments. Get it passed quick as you can. Wrote you 19th.

CHAS. F. HILMAN.

And there are a number of other telegrams and letters.

STATE OF IOWA,
DAIRY AND FOOD COMMISSION,
DES MOINES, *June 20, 1922.*

Hon. G. N. HAUGEN,
Washington, D. C.

DEAR SIR: In reply to your communication of June 17 I will say that I am heartily in sympathy with House bill 12053, in which the existing standard of 82 per cent milk fat is changed to 80 per cent, and I sincerely hope that you may be successful in getting Congress to make this change.

Yours truly,

R. G. CLARK,
Commissioner.

WATERLOO, IOWA, *June 20, 1922.*

Hon. G. N. HAUGEN,
House of Representatives, Washington, D. C.

MY DEAR MR. HAUGEN: I hasten to reply to your letter of the 17th, although I fear my letter will not reach you by Wednesday.

I heartily concur in your action, and I congratulate you upon the initiative you have taken in this respect.

If in any way I can be of assistance to you, I trust you will not hesitate to command me.

It is needless for me to go into details relative to the reasons why butter should be defined as containing not less than 80 per cent of milk fat instead of 82½ per cent, because I am aware that you have full knowledge regarding the fact.

I sincerely hope you will succeed with the enactment of H. R. 12053, for such enactment will mean much to the farmers and dairymen of this country.

With kindest regards, I am,

Yours sincerely,

THE DAIRY FARMER,
HUGH G. VAN PELT,
Managing Editor.

CEDAR RAPIDS, IOWA, *June 19, 1922*

Hon. GILBERT N. HAUGEN,
Chairman Committee on Agriculture,
House of Representatives, Washington, D. C.

DEAR MR. HAUGEN: I have your esteemed letter 17th instant inclosing copy of bill (H. R. 12053) introduced by you on June 16, 1922, and same has my entire approval. It is absolutely fair to all.

I trust you will get same out of committee promptly and vote taken by the House very soon, before adjournment; and passed on to Senate so they can vote on it, go to conference, and sent to the President for his signature, so we can have relief from the bad conditions that exist in the United States in the dairy industry before another crop will be in the making.

Presume that you will attend to appropriation to enforce, or the Department of Agriculture will care for same from theirs?

When you have H. R. 12053 without any amendments or additions into law you will have accomplished just what our dairy industry needs.

With my very kindest regards, I am,

Yours very truly,

CHAS. F. HILMAN.

CHICAGO, *June 22, 1922.*

Hon. GILBERT N. HAUGEN,
Washington, D. C.

DEAR SIR: This will acknowledge receipt of copy of H. R. 12053 and notice regarding hearing upon the same.

Not being connected now with "Chicago Dairy Produce," having disposed of my interest some time ago, I am not in position to follow up this matter as would otherwise be the case, though I may say that the measure appears to be justified and I believe nobody can offer a valid objection to its passage, for 80 per cent fat in butter is certainly a reasonable requirement, and the present requirements for less than 16 per cent moisture is so generally accepted as being correct that I see no basis for opposing this measure, unless perhaps those who make "monkey food" to foist upon the public will claim that it will hurt their game. But since these counterfeiters are entitled to little or no sympathy at the hands of decent people I assume that their objections will not be taken seriously.

Very truly yours,

W. T. SEIBELS.

CARTHAGE, MO., *June 24, 1922.*

Congressman G. N. HAUGEN,
Washington, D. C.:

Am in favor of defining butter by adding to the present definition "and 16 per cent moisture."

E. G. BENNETT,
Missouri Dairy Commissioner.

GOOD HOUSEKEEPING,
BUREAU OF FOODS, SANITATION, AND HEALTH,
Washington, D. C., June 23, 1922.

Hon. GILBERT N. HAUGEN,
Chairman Committee on Agriculture,
House of Representatives, Washington, D. C.

DEAR MR. HAUGEN: Absence from the city prevented my appearing before your committee yesterday, when the new butter bill, H. R. 12053, was under consideration. In case the hearings are closed I would be glad if you would incorporate the inclosed memorandum in the minutes of the hearing, and call it to the attention of the other members of the committee when the bill is under consideration.

I am, respectfully,

H. W. WILEY.

MEMORANDUM OF DR. H. W. WILEY.

I desire to call the attention of the members of the committee to lines 7 and 8 of the above-mentioned bill. The food standards committee, under authority of Congress, fixed the standard of butter, found on page 5, Circular 136, United States Department of Agriculture, office of the Secretary, entitled, "Standards of Purity for Food Products," issued June, 1919, of "not less than 82 5 per cent of milk fat."

The hearings preceding the fixing of this standard were publicly advertised and numerously attended by all interested parties, including manufacturers and dealers. Hundreds of analyses of good butter bought on the open market were carefully studied. The committee consisted of representatives of the Department of Agriculture, the Association of Official Agricultural Chemists, and the State and National Dairy and Food Commissioners' Association.

Before changing a standard thus carefully prepared, a full consideration of the subject should be had. As one of the members of the committee who fixed this standard, I desire to state the reason which induces me to express the hope that this part of the standard will not be lowered.

Under the present standard the total quantity of water and salt which may find a place in butter amounts to 17.5 per cent. As the quantity of salt is in-

creased the quantity of water which may be present is necessarily diminished. As even the best butter contains a trace of curd and ash it would not be safe to manufacture it with more than 15 per cent of moisture. All high-grade butters contain less moisture than that. The proposed standard will permit the addition of 20 per cent of materials not butter fat. As the proposed standard limits the quantity of water to 16 per cent, it would be possible with that percentage of water to add 4 per cent of salt and natural curds and ash to the butter. By diminishing the quantity of water, 4 to 5 per cent of such additional matters would find their way into butter. This would tend to produce a very low grade of butter, thus bringing standard butter into disfavor and promoting its adulteration.

Such a condition would result in a great detriment to the dairy industry, and bring into competition with a really first-class butter a debased and undesirable article.

Mr. TEN EYCK. Mr. Chairman, there is a suggestion I have to make here, and that is to have this bill only apply to those who are engaged in the manufacture of butter. That will exclude the individual farmer, and I believe to a certain extent we ought to exclude him from coming within the purview of this bill if it is possible. Now, I merely offer that as a suggestion.

The CHAIRMAN. We will take that up when we get through.

Mr. TEN EYCK. Very well.

Mr. FARRELL. Here is another telegram. [Reading:]

MINNEAPOLIS, MINN., *June 20, 1922.*

J. J. FARRELL, *Washington, D. C.:*

We are not in favor of a double standard. Would favor 80 per cent fat.

SAMUELS BROS. CO.

And another one from Minneapolis, as follows. [Reading:]

"We are not in favor of a double standard. Would favor 80 per cent fat.

"EDWARDS BROS."

The CHAIRMAN. Who are they?

Mr. FARRELL. Creameries.

Mr. VOIGT. May I ask you whether you have a copy of the telegram which you sent to these people?

Mr. FARRELL. I haven't got it here.

Mr. VOIGT. Can you state exactly what was in it?

Mr. FARRELL. I can give it to you. I can get it for you later if you wish.

Mr. VOIGT. Can you state now what was in the telegram that you sent?

Mr. FARRELL. "Butter bill introduced in Congress requiring a double standard; 16 per cent moisture, 80 per cent fat. Are you in favor of the double standard or single standard?"

Mr. VOIGT. Did you say anything in your telegram to the effect that you were not in favor of the double standard?

Mr. FARRELL. I did in some of them that have asked my view of it. I have never been in favor of the double standard. I have been on record on that for years.

Mr. ASWELL. May I interrupt with a question, Mr. Chairman? The evidence is very conclusive that the dairy people themselves, the manufacturers, are very much in favor of this, but have you heard anything from the consumers of butter, the people that buy the butter? Have you any information, any telegrams, or any communication from consumers of butter?

The CHAIRMAN. No. All these telegrams are voluntarily sent in.

Mr. ASWELL. All in the special interests of their own business.

The CHAIRMAN. I arranged with Mr. Loomis to confer with his people, and that I should send copies of the bill to the parties that I have heard from.

Mr. ASWELL. I would like to know what the average consumer thinks about this.

Mr. FARRELL. It does not affect the average consumer.

The CHAIRMAN. I think the consumer wants an honestly made article, and he wants 80 per cent, and he does not propose to buy butter at 60 per cent where he is entitled to 80 per cent. It is just as much protection for the consumer as it is for the producer.

Mr. FARRELL. This requires an 80 per cent minimum. It does not say that it is going to be lower than it has been. It is all going to be 80 per cent, as it has run for years. You can not change it much.

Mr. ASWELL. If you can not change, what is the use of legislating?

Mr. FARRELL. You have got to set the minimum standard, because otherwise people will go to adulterating. I am not in favor of repealing the adulterated butter act, but I am in favor, if you pass this measure, to pass the single fat standard, and that will leave the internal revenue act intact, but I do not see why the dairy people should be sewed up by a double standard in a food product when no other industry is. You are getting them going and coming. Here is a case of 81.50 per cent of fat in butter, and 15 per cent of moisture. Here is another case of 17.5 per cent of moisture and 79.93 per cent of fat. And here is a case of 15.80 per cent of moisture and 81 per cent of fat. And many of them run right along in that way; it fluctuates with the salt and the casein. Now, we can approximately control this matter. But that butter maker does not live who controls it to exactness. Approximately we can control it.

The CHAIRMAN. What is the tolerance that is applied? Is it about 1 per cent?

Mr. FARRELL. Well, the dairies now allow 2½ per cent.

The CHAIRMAN. What would be the tolerance if we adopted 80 per cent fat standard, Mr. Larson?

Mr. C. W. LARSON (representing the dairy division of the Department of Agriculture). There is none adopted that I know of.

The CHAIRMAN. No; there is none adopted, but one will have to be adopted. The court will adopt it.

Mr. FARRELL. If you enact this bill into law, Mr. Chairman, there will not be any tolerance.

The CHAIRMAN. The courts will take care of that. There is always tolerance. They would not convict on 79½ or 79.

Mr. FARRELL. May I recite this incident, Mr. Chairman. The internal revenue department now have a carload of unsalted butter that ranged in fat from 81 per cent to 83½ per cent; that butter was seized and declared adulterated butter because it had some packages that contained 16½ per cent and 16.70 per cent and so on, of moisture. Yet the average content of that car of butter was under 16 per cent, but they had to pay their penalties.

The CHAIRMAN. They do not go on averages, of course.

Mr. MCLAUGHLIN of Michigan. Mr. Farrell has some interesting particulars concerning a contest, which he told me of. They were interesting to me, and I believe they would be interesting to the committee. It is a report of a contest in an exhibit of butter. Samples were sent by a very large number of creameries, reliable creameries, to this contest, where the butter was examined by skilled, experienced judges, and there is a record there of the average percentage of butter fat in all those exhibits, and some figures there show the averages of moisture in butter made and exhibited in that way. I think it would be interesting to the committee to have Mr. Farrell tell about that, and put the figures in the record.

The CHAIRMAN. Why not have him insert it in the record?

Mr. MCLAUGHLIN of Michigan. Whatever you prefer.

The CHAIRMAN. Can you give us that so it can be incorporated in the record, Mr. Farrell?

Mr. FARRELL. I can copy it for you. I want this record, but can make a copy for you.

The CHAIRMAN. You just now referred to a number of them?

Mr. FARRELL. Yes.

The CHAIRMAN. How many cases are there in that record?

Mr. FARRELL. One hundred and ninety-nine samples of butter made in cooperative creameries, sent to a scoring contest in Minnesota, and many of these samples contained 80 and 81 per cent of fat and 16 and 16 and a fraction per cent of moisture.

Mr. MCLAUGHLIN of Michigan. What percentage of all those run above 16 per cent?

Mr. FARRELL. Of the 199 samples, 39, or 19.5 per cent contained less than 80 per cent of fat.

Mr. MCLAUGHLIN of Michigan. Well, how about moisture?

Mr. FARRELL. I would have to go through all these figures and find out.

Mr. MCLAUGHLIN of Michigan. I thought you had those figures prepared?

Mr. FARRELL. No; this is a record of these samples, showing the per cent of fat. We were endeavoring to have a fat standard of 80 per cent established. While the moisture figures are given in another column they are not given here.

The CHAIRMAN. Without objection, they will be incorporated in the record.
(The information to be furnished by Mr. Farrell is here printed in the record, as follows:)

Butter made in some of the best Minnesota creameries.

	Fat content.	Moisture content.		Fat content.	Moisture content.
	Per cent.	*Per cent.*		*Per cent.*	*Per cent.*
Sample No. 1	80.98	16.1	Sample No. 6	81	16.60
Sample No. 2	80.66	16.7	Sample No. 7	82	16.3
Sample No. 3	81.75	16	Sample No. 8	78	18.40
Sample No. 4	79.05	16	Sample No. 9	80	16.60
Sample No. 5	81	15.80	Sample No. 10	79.65	16.10

Mr. FARRELL. I have several telegrams which I would like to read.
The CHAIRMAN. You may do so.
Mr. FARRELL (reading):

ST. PAUL, MINN., *June 20, 1922.*

J. J. FARRELL, *Washington, D. C.:*

Protest vigorously for us against double standard or any new laws regulating manufacturing of butter. We think the present standard of 82 should be amended to read 80. Any further changes may prove detrimental rather than beneficial.

TILDEN PRODUCE CO.

ST. PAUL, MINN., *June 20, 1922.*

J. J. FARRELL, *Washington, D. C.:*

We strongly favor a single standard for butter and believe the fat standard is really the only sensible and practical standard. If we can not secure fat standard would prefer no change at all from present situation as we do not believe it can be improved any other way.

NORTHERN PRODUCE CO.

ST. PAUL, MINN., *June 20, 1922.*

J. J. FARRELL, *Washington, D. C.:*

Agree with you, fat standard alone is best. Believe dairy products members all agreed. Try get bill amended committee and get enough American Association members to back you.

THE R. E. COBB CO.

The CHAIRMAN. Who are they?
Mr. FARRELL. They are manufacturers of butter.
Mr. ASWELL. Now that telegram says "We agree with you." That shows that you showed in your wire how you stood.
Mr. FARRELL. Yes, I did to some of them. They know how I stand. They belong to our association.
Mr. WALKER of the Blue Valley Creamery Co. sent the following telegram:

ST. PAUL, MINN., *June 20, 1922.*

J. J. FARRELL, *Washington, D. C.:*

Am not particularly opposed to double standard but am opposed strongly to giving any opportunity to our opponents upon the floor of Congress to amend present oleomargarine laws possibly reducing 10 cent tax. Think likely we should continue our efforts to have standard changed by department ruling rather than by requesting special legislation. Will be glad to attend hearing if it can be postponed one week.

J. A. WALKER.

Here is another. [Reading:]

MINNEAPOLIS, MINN., *June 20, 1922.*

J. J. FARRELL,
Washington, D. C:

We favor 80 per cent fat standard; single standard only.

EIDSVOLD CBY. Co.

This is from the president of the Kansas Association. [Reading:]

WICHITA, KANS., *June 20, 1922.*

J. J. FARRELL,
National Dairy Products Committee, Washington, D. C.:

Answering wire regarding double-standard bill, time too short to get expression from members of our association. Personally not in favor of it, and several others of same opinion. Some fear bill may be an opening for oleomargarine interests. Is there not some way to have hearing postponed? Can you furn sh us copy of bill?

L. E. BEST.

This is from Mr. Borman, of the Beatrice Creamery Co. [Reading:]

CHICAGO, ILL., *June 20, 1922.*

J. J. FARRELL,
National Dairy Products Committee, Washington, D. C.

Marple out of city. Sure his views concur with ours, already expressed to you on advisability postponement giving industry opportunity pull itself together.

T. A. BORMAN.

The CHAIRMAN. Just a moment. Mr. Thompson desires to make a request.

Mr. THOMPSON. I have to leave, and when this bill comes up I want to be reported as being for the 80 per cent single standard.

The CHAIRMAN. Is there any objection to Mr. Thompson having his vote recorded in his absence? Without objection it will be so ordered.

Mr. FARRELL. I have here another telegram from Mr. Borman. [Reading:]

CHICAGO, ILL., *June 20, 1922.*

J. J. FARRELL,
Secretary National Dairy Products Committee,
Washington, D. C.:

Our first desire to have hearing postponed order give opportunity to decide regarding its merits whether we want single or double standard. If postponement means delay until next fall, would prefer not act too hastily in matter.

T. A. BORMAN.

Mr. ASWELL. Mr. Farrell, whom do you represent?

Mr. FARRELL. Manufacturers.

Mr. ASWELL. Who furnishes the money for all this propaganda? Is there a fund raised?

Mr. FARRELL. Yes.

Mr. ASWELL. Who furnishes the money for this propaganda?

Mr. FARRELL. Our association will pay for these telegrams. I certainly can not pay for them. And there are only about 12.

The CHAIRMAN. If you have any further telegrams just tell what they are, and incorporate them in the record.

Mr. FARRELL. I have read all those that I wish to put in, Mr. Chairman.

Mr. MCLAUGHLIN of Michigan. Do any of these companies make or deal in oleomargarine?

Mr. FARRELL. None belonging to our association; no, sir.

The CHAIRMAN. Is that all, Mr. Farrell?

Mr. FARRELL. That is all, except, Mr. Chairman, I wish to say in order to express the views of our members, that we would prefer the modification of this regulation, and if there is to be a law we prefer the single-fat standard.

The CHAIRMAN. Now, what is your suggestion as to dividing it into two departments, one or two?

Mr. FARRELL. I should suggest leaving it as it is. You know we are in two departments, and that is the problem of putting us up against two hard and fast standards here. We will be in both departments by an act of Congress.

We are in two departments now, and there are regulations, and they have at least some humanity in them, so that if these regulations are unfair and they try to enforce them because moisture has come in inadvertently, they can see the point and penalize accordingly, but if you enact this into a law it means that the Internal Revenue Department has the word of Congress, and there is nothing to follow but the law.

The CHAIRMAN. Do you want the law applied to the two departments or only one?

Mr. FARRELL. Well, in my opinion a single 80 per cent fat standard does not interfere with the adulterated butter act in one way or the other.

The CHAIRMAN. I am not so sure about that.

Mr. FARRELL. You are defining butter, and the butter act of 1902 defines butter, and the Treasury Department has made a regulation defining what is the normal quantity of moisture in butter.

The CHAIRMAN. The question has been raised, and this has to be looked into very carefully. But what is your desire, and what do you suggest? Shall it apply to the two departments or only to one, as suggested in this bill?

Mr. FARRELL. I should say if we are going to enact a law to have this apply to the single 80 per cent fat standard, and that would govern the Bureau of Chemistry, and if there are many people that want that 16 per cent moisture regulation, let it be there, and if they put more moisture in intentionally they will suffer the consequences.

The CHAIRMAN. You speak about the Department of Agriculture. What about the Treasury Department? Do you want it to apply to the two departments? The same standard applying in the two departments?

Mr. FARRELL. It will so far as the fat content is concerned, as I understand.

The CHAIRMAN. Well, that is all.

Mr. FARRELL. Yes, certainly. I do not see how it can do otherwise.

The CHAIRMAN. All right. Thank you very much.

(Witness excused.)

STATEMENT OF MR. G. L. McKAY, SECRETARY AMERICAN ASSOCIATION OF CREAMERY BUTTER MANUFACTURERS, CHICAGO, ILL.

The CHAIRMAN. Mr. McKay, will you please state for the record whom you represent?

Mr. MCKAY. Mr. Chairman, I am secretary of the American Association of Creamery Butter Manufacturers, an organization that manufactures nearly half of the creamery butter produced in this country. I was formerly professor of dairying at the Iowa State College for 17 years, so I am somewhat familiar with the butter business.

At the present time, as you gentlemen know, we have a ruling requiring 82½ per cent of butter fat. Years ago the creamery men opposed that ruling and it has never been enforced since that time. Some of the States, however, have adopted the rulings of the Federal department and have enacted them into law.

In the state of Massachusetts at the present time they are threatening to enforce this law. If the statute is changed and if you fix the requirement at 80 per cent the Massachusetts law will automatically go back to 80 per cent.

Mr. ANSWELL. Why is that?

Mr. MCKAY. Because they have adopted the Federal rulings as their standard. I am informed that as soon as the law is changed their State law will be changed. They opposed the 82½ per cent when it came in, but they believed in the theory that the way to change a bad law was to enforce it.

Mr. TEN EYCK. Of course this will not prevent them from passing a new law fixing the standard at 82½ per cent?

Mr. MCKAY. No, it will not.

Mr. TEN EYCK. But you believe they will acquiesce in the Federal law and adopt it?

Mr. MCKAY. Yes, and that is true of a number of States. I believe Congressman Haugen stated that Wisconsin had 82½ per cent. Indiana has the same. Illinois has the same. Oklahoma has the same. Those laws were enacted to bring the State requirements in line with the Federal regulations, but in no case have they ever been enforced.

Now, all the dairy associations of the country have gone on record at their annual meetings in favor of 80 per cent. The breeding associations of the country have all gone on record in favor of it. I think probably I have made

more chemical analyses of butter than any other man in this country. I have two chemists continually analyzing butter, and have had for years, and I am quite familiar with the composition of butter. If the law changing the standard is going to apply only to the Bureau of Chemistry and you are going to leave the internal revenue regulation at 16 per cent, then I would favor the single standard. Personally I have always been in favor of the double standard myself, on the theory that most of the creameries can comply with it. The farmer can, and probably ought to, be left out of this question altogether.

The CHAIRMAN. Then, Doctor, let me ask you this. Do you know of any State that enforces 82½ per cent, or anything above 80 per cent?

Mr. MCKAY. There is no State enforcing anything above 80 per cent, because it is impracticable to do so.

The CHAIRMAN. Do you know of any State that has a lower standard than 80 per cent?

Mr. MCKAY. No; I do not.

The CHAIRMAN. Then, practically, 80 per cent is the universal standard in this country?

Mr. MCKAY. Yes; and it is the universal standard in almost all civilized countries. Germany at the present time has a double standard; that is, they have 80 per cent for salted butter and 82½ per cent for unsalted butter. Canada requires 80 per cent fat. The English law is based on practically 80 per cent, and they have a moisture requirement. Most of the European countries have moisture requirements. I have twice had the opportunity of visiting those countries and inspecting the conditions there.

Mr. VOIGT. What are the regulations in England and Canada as to moisture?

Mr. MCKAY. Straight 16 per cent. That means practically 80 per cent fat, 2½ per cent salt, and 1 per cent curd.

Mr. VOIGT. Does the unsalted butter in the trade sell for more than the salted butter?

Mr. MCKAY. Yes; it sells for more on account of more fat being present.

Mr. VOIGT. And, of course, a man who makes unsalted butter can afford to put in a little more fat, because he gets a higher price for it?

Mr. MCKAY. Yes.

Mr. VOIGT. You said awhile ago that you had analyzed a good many samples of butter. What is the fact as to the water content of butter that is made on the farms?

Mr. MCKAY. I have not had very much experience with farm butter. Farm butter will vary from 10 per cent to probably 18 per cent. There may be some that will go higher. That will depend upon the conditions under which the farmer churns his butter. If he churns at a high temperature there is a tendency to get in more moisture.

Mr. TEN EYCK. In other words, in the summer time, when there is no ice and the butter is hot, it is very difficult to get it down to 16 per cent?

Mr. MCKAY. There would be a tendency that way; yes.

Mr. VOIGT. As a general rule, is not the water content of butter made on the farm lower than that made in the creamery?

Mr. MCKAY. Probably the average would be lower, yes. The creamery men have systematized their methods of making butter.

Mr. TEN EYCK. Let me ask you a question right there. This is not a move, is it, on the part of the manufacturers of butter to cut out the competition of the farm in any way?

Mr. MCKAY. No, sir.

Mr. TEN EYCK. The reason I asked that question is this: When big industries start in and get themselves into such a position that they know just what they are doing, and there is a law passed to require just what they are capable of performing, that results in a hardship upon the individual.

For instance, take the situation in New York State with relation to cider. We have a law there that requires a certain amount of acetic acid in the cider. That means that you have to hold the cider for a certain length of time to get the acetic acid. In the meantime the acetic acid turns into alcohol, and along comes the Federal law and says that you must not have that alcohol in there, and the man finds that he can not sell his cider because the State law requires the acetic acid and the Federal law forbids the alcohol. So it is the cider mills that supply the cider, and it has prevented the individual farmer from making cider. I do not want to see the butter industry put into the same position.

The CHAIRMAN. Has it ever been suggested that the farmers should be exempted from the law?

Mr. McKAY. I would have no objection to the exemption of the farmer.

The CHAIRMAN. But has it ever been suggested that they should be?

Mr. McKAY. It has not been to me; no.

The CHAIRMAN. Have you ever heard of a complaint from a farmer on that score?

Mr. McKAY. I have never heard of any complaint.

Mr. ASWELL. Probably the farmers have not heard of this bill. Nobody heard of it until three days ago.

The CHAIRMAN. There are two classes of people to be considered, the consumer as well as the producer. If the farmer were exempted, would you think he would put in 20 or 30 per cent of water. If they did they could not sell it.

Mr. ASWELL. Doctor, did you say that all of the civilized countries of the world, or practically all of them, have laws regulating moisture content?

Mr. McKAY. They have laws regulating the moisture, and some of them are very high.

Mr. ASWELL. Well, that is pretty good evidence, is it not, that we ought to put it in here?

Mr. McKAY. The reason they have these laws, I think, is that it is much easier to determine the amount of moisture in butter, but when you come to analyze for fat, you have the moisture, the casein, and the salt to remove to get at the fat content. I think probably that was the reason that England adopted the 16 per cent. Denmark has 16 per cent for export butter and 20 per cent for home butter. They do that because their butter practically all goes to the English markets.

You asked me a question, Mr. Chairman, some time ago about the position of the consumer in this matter. I think that a requirement of 80 per cent fat will give the consumer a more regular standard of butter. Some people might want to put in 77, 78, or 79 per cent of fat, but it everybody were compelled to put in 80 per cent it would bring about fairer competition among the producers.

Mr. ASWELL. Are they not compelled to do that now under the regulations?

Mr. McKAY. I would say not.

Mr. ASWELL. They are not even required to have 80 per cent?

Mr. McKAY. There have been a few lots seized. There have been some cases where there has been a little butter seized, but as a rule they are not held to that.

Mr. ASWELL. Not as much as 80 pr cent?

Mr. McKAY. Not as much as 80 per cent.

Mr. ASWELL. Well, the regulation requires 82½ per cent, but we do not bring it up to 80.

Mr. McKAY. Of course the ruling of the department is not the law, and there has been some question whether the ruling would stand in the courts, so they have not enforced that.

Mr. TEN EYCK. If you have no moisture-content ruling but have a law requiring 80 per cent of butter fat, how much water can you get into it? What would be the maximum amount of water that you could put into the butter, with an 80 per cent requirement of butter fat?

Mr. McKAY. In salted butter I would say that 16 per cent would be the limit, but in unsalted butter you could put in 18 or 18½. You see normally in butter there is about 1 per cent casein and curd, and you can figure easily what the difference would be.

The problem here is that in these States that have adopted the Federal rulings they have a new commissioner every once in a while. The new commissioner starts out with the idea that he is going to enforce this law, and it runs along for a time until they find it impracticable.

The CHAIRMAN. Just a moment, Mr. McKay. Mr. McLaughlin desires to make a request of the committee.

Mr. McLAUGHLIN of Michigan. I am obliged to leave at this time, and I simply desire to ask that I be recorded as present for the purpose of making a quorum and that I be permitted to leave my vote with the chairman as favoring the bill and also favoring the 80 per cent standard.

The CHAIRMAN. Is there any objection? If not, it is so ordered.

Mr. McKAY. I have no further remarks, Mr. Chairman, unless there are some questions.

The CHAIRMAN. Did you suggest a single standard?

Mr. McKAY. I suggested the single standard, provided the Bureau of Internal Revenue is going to be left as it is. Personally I would very much dislike to see a high percentage of moisture in American butter.

The CHAIRMAN. Do you suggest applying the standard to the two departments?

Mr. McKAY. It is perfectly satisfactory to me to apply it to the two departments.

The CHAIRMAN. Have you any preference?

Mr. McKAY. I would leave the fat standard to the Bureau of Chemistry, making that a regulation, so that they can apply it in the States.

The CHAIRMAN. Would you also apply it to the Bureau of Internal Revenue?

Mr. McKAY. I would leave the Bureau of Internal Revenue as it is if you are not going to put the double standard in here.

Mr. ASWELL. But personally you are in favor of a double standard?

Mr. McKAY. Yes.

The CHAIRMAN. I have taken the matter up with the Treasury Department, and they desire to be included.

Mr. McKAY. I am speaking only for myself in this matter, simply stating my own personal views.

The CHAIRMAN. Mr. McKay, request has been made for a hearing by parties who desire to appear before the committee. Do you think it is necessary to delay proceedings in this matter for that purpose?

Mr. McKAY. Well, the same request that was made in the telegram which Mr. Farrell read to you has been made to me by two creameries.

The CHAIRMAN. The situation is this: You have secured 30 days stay in Massachusetts?

Mr. McKAY. Yes.

The CHAIRMAN. When will that time be up?

Mr. McKAY. It will be up sometime about the latter part of this month.

The CHAIRMAN. So that after that time you will have to overcome that embarrassment that exists by reason of that conflict.

Mr. McKAY. I made another special appeal before writing to you trying to get five months, or six months.

Mr. ASWELL. You remarked a while ago that occasionally a new commissioner would start in fourflushing, and so on. That is true. Now, is it not likely that Massachusetts would do the same thing and would fall into line?

Mr. McKAY. I do not think they would. The commissioner there is opposed to this law. He says that as they forced the law on them he wants to fight it out to the bitter end.

The CHAIRMAN. And then they will repeal it themselves?

Mr. McKAY. Yes; they will in time. But, in the meantime the creamery man in the West ships his butter there, and the butter is seized, and he has to engage counsel.

The CHAIRMAN. The people who ship butter there will be embarrassed?

Mr. McKAY. Yes. You might ship butter to New York, and it might be transshipped to the other States.

The CHAIRMAN. Mr. Gray, we will hear you now.

STATEMENT OF MR. C. E. GRAY, PRESIDENT CALIFORNIA CENTRAL CREAMERIES, SAN FRANCISCO, CALIF.; ALSO PRESIDENT CALIFORNIA DAIRY COUNCIL.

Mr. GRAY. Mr. Chairman, I should like to go on record as in favor of the double standard, and especially in favor of the 16 per cent moisture content. As I see it, we are confronted with two regulations in two different departments, the Bureau of Chemistry or the Department of Agriculture, and the Bureau of Internal Revenue of the Treasury Department. The enforcement which we have thus far had of butter standards has been very largely confined to that under the Internal Revenue Bureau. The adulterated butter act defines adulterated butter thus:

"Any butter in the manufacture or manipulation of which any process or material is used with the intent to or effect of causing the absorption of abnormal quantities of water, milk, or cream."

Now, on account of that language it has been necessary for the Secretary of the Treasury, or the Secretary of Agriculture, to make a ruling as to what an abnormal quantity of water, milk, or cream is, and that rule has been 16 per cent. Whenever a case comes into court it is necessary for the Treasury Department to introduce expert testimony to prove that 16 per cent is abnormal, and therefore the enforcement of this law has been a difficult and expensive thing for the Treasury Department.

It is my judgment that this act has been a very fortunate thing for the dairy industry. It is a fact that selling water instead of butter fat is a profitable business so long as you can get away with it. Therefore we are confronted with the

situation of having some people engaged in the manufacture of butter who disregard the best interests of the butter industry and sell water for butter, or would sell water for butter so far as it would be possible to do so.

The composition of butter is a controllable thing. The manufacturers of butter can control its composition. They can put water in or they can leave it out, and water can be put in in large percentages. That being true and because it is profitable to sell water instead of butter fat, there is a tendency to get as near the limit as possible, and in getting as near the limit as possible there is always the chance of somebody going beyond the limit. Therefore we have violations of the law.

Mr. ASWELL. They all come up to the limit, do they not, in water?

Mr. GRAY. The tendency naturally is for them to do so.

Mr. ASWELL. And it is better business to come up to the limit?

Mr. GRAY. As a commercial proposition, that is necessary.

Mr. ASWELL. Not necessary, but it is a good quality?

Mr. GRAY. Yes; good business. But in meeting competition it may become necessary, for this reason: As one gentleman has already said to you, the amount of water can not be determined by the appearance of the butter. Water may be incorporated without injuring the appearance of the product. It is my judgment, however, that incorporating large quantities of water does injure the quality of the butter besides reducing its food value.

As I understand it, the Internal Revenue Bureau has construed this act as applying to those engaged in the manufacture, and they have not taken the farmer as being a manufacturer of butter. For that reason, as has been stated, the Internal Revenue Bureau has not concerned itself with farm-made butter, because the farmer is not regarded as a manufacturer.

It is my judgment that it would be most helpful to the industry if butter were defined as a product containing not more than 16 per cent of water. That would then clear up this situation with the Internal Revenue Bureau and make it unnecessary for them to bring in expert testimony in every case. The other conditions would be exactly as they are now, as I see it.

Mr. TEN EYCK. If a farmer should make a certain amount of butter, with 16 per cent water, coming within the limits of this bill, and a certain percentage of casein and a certain percentage of salt and 80 per cent of butter fat, and put that away in a crock, at the end of three or four months in cold storage would that percentage of water change in relation to the percentage of butter fat?

Mr. GRAY. It would only be a very slight change. There might be a slight evaporation, but it would be very little, probably in tenths of a per cent.

Mr. TEN EYCK. Is it possible that it would increase any?

Mr. GRAY. No; I would say it would be impossible for it to increase. My judgment is that a definition incorporating the 16 per cent feature is very desirable from the standpoint which I have mentioned, and also because of the fact that other countries have the 16 per cent regulation.

The CHAIRMAN. But when you require 80 per cent fat the water will be 16 per cent, will it not?

Mr. GRAY. Not necessarily.

The CHAIRMAN. Unless it is unsalted butter?

Mr. GRAY. What we term the curd content or casein content of butter is around 1 per cent in well-made butter.

Mr. ASWELL. How much butter do we export? Do you know?

Mr. GRAY. At the present time, practically none. The amount coming in offsets that which goes out. Some goes out and some comes in.

Mr. ASWELL. Would the fact that some of the countries to which we export have the 16 per cent limitation be embarrassing? If we, not having the 16 per cent limitation, export butter to England, for instance, would not that be embarrassing to our exporters?

Mr. GRAY. It might be. If we were exporting to England, of course, we would have to comply with the 16 per cent limitation.

Mr. ASWELL. And the same thing would be true of Canada, would it not?

Mr. GRAY. Yes.

Mr. TEN EYCK. What is the reason that Denmark permits a higher percentage in butter for home consumption?

Mr. FARRELL. The butter is just as good. Eighty-six per cent of milk is water. They sell their surplus to markets that demand 16 per cent.

Mr. ASWELL. That is further evidence that they put in as much water as they care in every case?

Mr. FARRELL. They make the best butter in the world, they claim, except the United States.

Mr. GRAY. The consumer can not judge the amount of water by the appearance of the butter, unfortunately. Therefore the importance of a regulation.

Answering the question as to whether or not the requirement of 80 per cent fat would limit butter to 16 per cent water, it would not. The curd being a very small amount, 1 per cent, we might then have 10 per cent water in unsalted butter, and the water would be decreased as the salt was increased, 2 per cent salt being a light salted butter, 3 per cent being average, and 4 per cent approaching high salted.

Mr. TEN EYCK. In other words, if you had the average amount of salt in butter and the amount of curd that is always in butter, it would practically limit the water to 16 per cent?

Mr. GRAY. Yes; if you had average salting and the usual curd, it would average about that.

However, the practical enforcement of the butter standard has rested with the Internal Revenue Bureau, and if that enforcement should be transferred to the Bureau of Chemistry the situation would be materially changed. All intrastate business would be left in the hands of the State officials. As it is now the whole United States is practically working under one plan, 16 per cent moisture; and in my judgment, while it may be painful to those who go beyond that, even though it might at times be unintentional, the thing on the whole has been most fortunate for the dairy industry. The dairy industry, in my judgment, can profit best by supplying dependable high-grade butter to the consumer.

Mr. TEN EYCK. What is your idea in relation to making this bill apply to the manufacturer? Do you want it to apply to the individual farmer as well?

Mr. GRAY. It is my judgment that it should apply especially to those engaged in the manufacture of butter as a business.

Mr. ASWELL. Does the farmer send out his butter into interstate commerce?

Mr. GRAY. In most cases it enters into interstate commerce, but I feel that if we concern ourselves with those engaged in the manufacture of butter as a business we need not be concerned about farm butter.

Mr. TEN EYCK. The trouble is that a farmer manufactures a little butter and sells it to some individual, and he loses control of that butter and it may get into interstate commerce without his knowing it. If a record is made of it it is traceable back to him, and even though he tried to make the best butter he could, yet, on account of his lack of facilities for testing, and so on, he is liable to get into trouble by unknowingly violating the Federal statute.

Mr. GRAY. That might be the case, and that would apply equally whether the standard be on butter fat or on water.

Mr. TEN EYCK. Yes.

Mr. GRAY. In farm butter, where the effort is made to produce butter of good quality, it is a very rare thing to have 16 per cent water, and it is a rare thing to have less than 80 per cent butter fat.

Mr. TEN EYCK. I agree with you there.

The CHAIRMAN. Thank you very much. Mr. Silver, did you want to be heard?

Mr. SILVER. No.

Mr. ASWELL. Is there anybody here opposed to this bill?

The CHAIRMAN. Not that I know of. I will find out if there are any.

STATEMENT OF MR. A. M. LOOMIS, WASHINGTON, D. C., REPRESENTING NATIONAL DAIRY UNION AND NATIONAL GRANGE.

Mr. LOOMIS. Mr. Chairman, there has been one matter referred to here about which I feel that I ought to say just a word, because, as you gentlemen know, so far as I am here officially at all I am connected with the National Grange as well as the National Dairy Union, and the National Grange is one of the big organizations of farmers of this country.

Now, I want to say very frankly to the members of this committee that I do not think the farmers should be excepted from this or any other bill that is right. The thing we are trying to get here and the thing about which I am most concerned is to have the consumers of dairy products of the United States understand that the dairy products which are being furnished for them are the best dairy products which can be made. I believe that is the greatest *benefit which can* come to the dairy industry from this bill.

There are those people, in and out of Congress, who do try and have tried to lead the public to believe that much of the butter that is produced in this country is not good butter, and the claim is made that much farm-made butter is not good butter. For that reason particularly I do not want to see any emphasis placed on anything, either in the discussion here or in any action which this committee may take, which would make it appear that any part of the butter makers of the United States were being exempted from the requirment of putting on the market the best butter.

Mr. ASWELL. How do you stand with reference to the single and double standards?

Mr. LOOMIS. Well, I have expressed myself as far as I could.

Mr. ASWELL. But you did not make your position very strong.

Mr. LOOMIS. I know that, because I am not a practical butter man, Congressman Aswell. My concern has been over the possible weakening of the internal revenue statute, the adulterated butter law, which has been referred to here, if the 16 per cent maximum is not mentioned in this act. I have not had time to go into that matter to see whether or not it will have that effect. If it will weaken the enforcement of the 16 per cent rule by the Internal Revenue Bureau, then I certainly should say they ought not to be left out of this bill. If it will leave the internal revenue statute and its enforcement where it is now, then I should have no objection.

Mr. ASWELL. It has been testified here that it is not being enforced now.

Mr. LOOMIS. The only regulation which they are enforcing is the 16 per cent regulation.

Mr. VOIGT. Is it a hardship upon any manufacturer of butter to limit him to 16 per cent mo'sture?

Mr. LOOMIS. The large preponderance of testimony from the butter manufacturers is that it is not. But I am not a practical butter man.

Mr. TEN EYCK. Then you are not in favor of the insertion in this bill of the clause that this shall apply to manufacturers of butter who are manufacturing butter as a bus'ness?

Mr. LOOMIS. If you put the word "only" in there I would oppose that.

Mr. TEN EYCK. I merely wanted to get your idea.

Mr. LOOMIS. That is my idea. I believe that the farmers of this country should stand on exactly the same basis as everybody else that manufactures butter.

Mr. ASWELL. That is a very sensible statement, in my opinion.

Mr. LOOMIS. And I believe the Grange will stand on that statement.

Mr. TEN EYCK. Let me ask you this question. We know that a man who is in the manufacture of butter as a business has entire control over his butter. He can sell it in the State or he can put it into interstate commerce, and therefore he can change the standard of his butter, because he can control the shipment of that butter and prevent it from getting into interstate commerce. Now, when the individual farmer sells his butter to a dealer the dealer can make a record of that butter and put it into interstate commerce, and when he is caught with that butter it goes back again to the farmer and the farmer pays the penalty.

Mr. LOOMIS. I assume that is true, Congressman. There are two or three other things to be said about it——

The CHAIRMAN (interposing). Is not that also true as to the cooperative creameries? They are the farmers?

Mr. TEN EYCK. Yes; but as a cooperative organization and as a business institution they can control where that butter will be consumed. They will sell it within the State and come within the State law as regards the amount of water and the amount of butter fat, and they will come in competition with the farmer who is afraid to go to the limit in relation to cheapening his butter for the reason that he loses control over his butter.

Mr. LOOMIS. The adulterated butter law applies to all butter sold, whether in interstate commerce or not. That is the chief thing to be considered—in answer to that.

Mr. TEN EYCK. We can not pass a law here for State business, Mr. Loomis. The only law that we can pass at this time to affect butter in any way is a law with reference to interstate commerce.

Mr. VOIGT. I think you are wrong about that.

Mr. TEN EYCK. If I am wrong I want to know it.

Mr. VOIGT. The law that is now being enforced by the Internal Revenue Bureau is a taxation measure which holds good all over the United States.

Mr. TEN EYCK. That is what I want to bring out, whether or not the farmer is protected by this.

The CHAIRMAN. I think there is a good deal in what Mr. Loomis has said. I think we are all interested in maintaining quality.

Mr. TEN EYCK. It is far from my purpose to put the farmer in an awkward position, or to give him unreasonable protection. At the same time, I do know that he has been been the man that has suffered from these laws where they have been enacted, on account of his inability to control his product through the consumer. That is the great difficulty of the farming industry today, that the farmer can not carry his product through, under the market conditions, to the consumer, and I do not want him to get caught by a bill like this that works a hardship on the actual producer of butter. Because he is the basic producer in the long run; he is the fellow that produces the milk as well as the butter.

Mr. FARRELL. Mr. Chairman, with the 80 per cent fat standard, it does not alter that adulterated butter act one iota. You are amending the act of 1886, defining butter, and reaffirmed in 1902. The adulterated butter law as applied to butter, under the moisture regulation, exempts the farmers' product when it is identified as such.

The CHAIRMAN. Let me make this suggestion. The department has spent two days in drafting this law. Since then I have had the drafting service of the House work on it, but they have not exactly come to an understanding as to what the amendment should be. If the committee decides to include the two departments, the drafting service, in cooperation with those departments, will draft proper amendments, so that there will be no question about what laws are amended or how they shall apply.

Mr. TEN EYCK. I want to bring this to the attention of the committee. If it was thought advisable by the Treasury Department to exempt the farmer before, why do we want to go on record to-day by putting him in now If there was a good wholesome reason why he was exempted before, does not that same reason exist to-day?

The CHAIRMAN. No law that has ever been passed has exempted the farmers specifically? The law, however, applies only to those whose chief business is manufacturing butter and by regulation; it is not applied to the individual farmer.

Mr. TEN EYCK. But there is a rule in the Treasury Department, as I understand, that exempts the individual farmer to-day from the rulings of that department. What information have we received that that was unwise and that we ought to overrule it now? I would like to ask Mr. Loomis that question.

Mr. LOOMIS. I would like to offer an observation in answer to it. There is a very great distinction between an administrative department of the Government dealing with the practical problems of enforcing the law and paying the costs of enforcement and our adopting something which is established as a national policy. I can conceive that the enforcement of the 16 per cent ruling on every crock of farmers' butter which comes into a retail store in the United States would cost so many times more than it could possibly produce that the Treasury Department would find it very expensive.

Mr. ASWELL. Does the Bureau of Internal Revenue make that exeption?

Mr. LOOMIS. I have not the slightest idea.

Mr. GRAY. Mr. Chairman, it is my understanding that that attitude has been taken by the Treasury Department from the language of the act, which, as I remember it, is to the effect that it applies to those engaged in the manufacture of adulterated butter as a business. The view has been taken that farmers are not in the manufacture of butter as a business.

Mr. ASWELL. Is there any public document specifying that farmers are exempted?

Mr. GRAY. I think not. That has simply been the attitude taken by the Treasury Department. The Treasury Department has some precedent for that, that when a concern is engaged in a particular thing as a business a certain percentage of their entire capital or time must be taken up by that business. Otherwise it is rather a secondary matter, as the making of most farm butter is. I think they have published nothing on that, but I understand that is their attitude. They have dealt only with those who were manufacturers. And I may say that their difficulties have been great enough in dealing with the manufacturers, because on account of the wording of the act, on account of the use of the term "abnormal water content," It has been necessary to bring in experts to establish what "abnormal" meant.

Mr. ASWELL. Just there. If that were enacted into law it must of necessity be enforced by the department. Would they not still have that same attitude?

Mr. GRAY. If butter were defined as a product containing not more than 16 per cent of water, if that is normal butter, then obviously butter containing abnormal quantities of water must be that butter which is over 16 per cent.

Mr. ASWELL. Yes; but this amendment would not change the language you just quoted.

Mr. GRAY. No. But in my judgment it could be tied on to their understanding by the Internal Revenue Bureau so as to save them the trouble of establishing what "abnormal" is.

Mr. ASWELL. Would they not still exempt the farmer as they do now?

Mr. GRAY. I think it would not have any bearing at all. It would not change the rest of the act at all. It would simply obviate the necessity of establishing in every case what "abnormal" is; and that has been so expensive that the Internal Revenue Bureau has been rather discouraged in the enforcement of this regulation, which in my judgment is one of the most fortunate things the butter industry has had. It is my judgment that on account of this it is maintaining a standard of quality which we could not have had without it.

It is my judgment that we need, and need very badly, a standard for butter, because butter is a manufactured article. It might be well to bear in mind the distinction between wheat and butter, that wheat is not a manufactured article, while butter is. Wheat is not subject to manufacturing variations as butter is.

Mr. TEN EYCK. But butter can be controlled, perhaps, a little better than wheat.

Mr. GRAY. Butter can be controlled. The composition of butter is a controllable proposition.

Mr. FARRELL. As Mr. Gray is a manufacturer and as I am representing the manufacturers, I wish to take exceptions to the statement that he made here, because the manufacturers differ so largely on it. He claims that if you embody the double standard in this legislation it will, of course, legalize the 10 per cent tax on butter that is inadvertently permitted to contain 16 per cent of moisture or a fraction over.

Mr. ASWELL. I do not think he claimed that.

Mr. FARRELL. Yes; he just made that statement, that it would sustain their attitude.

Mr. ASWELL. Let me interrupt you. I understood him to say it sustained the attitude of the Internal Revenue Bureau with reference to exempting the farmer. That is what he was talking about.

Mr. FARRELL. No; he was talking about the moisture content.

Mr. ASWELL. Well, on the question of moisture?

Mr. FARRELL. When you adopt the double standard here you do not exempt the farmer, but there is a regulation by the Treasury Department stating that when farm butter, known to be such——

The CHAIRMAN. Let me read the language:

"Every person who engages in the production of processed or renovated butter or adulterated butter as a business shall be considered to be a manufacturer thereof."

Now, we do not amend that.

Mr. ASWELL. Not at all. It stands just the same. That is the point Mr. Gray makes.

Mr. VOIGT. Then if the bill that is before the committee becomes a law, Mr. Ten Eyck's farmer would practically be exempted, as he is now.

Mr. TEN EYCK. That is all I want to have understood, because I believe that is the way it should be.

Mr. FARRELL. Mr. Voigt, may I ask you a question? Is it not your understanding that if the single standard is adopted the farmer will be exempted?

Mr. VOIGT. My understanding of this proposition is that the law as it now stands refers to a man who makes the manufacture of butter his business. The word "manufacturer" has a technical meaning in that law. For instance, a man who makes a little home brew at home would not under a similar law be considered a manufacturer of beer. This language means that he must be a man who has a plant, who has some capital invested, whose chief occuption is the manufacture of butter. A man who runs a farm and makes a little butter as a side line would not come under this law, and if we let this language stand my opinion is that whether we adopt the single standard or the double standard he would not be affected by the proposed act.

Mr. FARRELL. No; because the regulation of the department now exempts them

Mr. VOIGT. And the department could not make a different regulation under this law as it reads.

Mr. REID (American Farm Bureau Federation). Mr. Chairman, I would like to say a further word. If the farmers are to come under this bill specifically, I believe they should be exempted as they are now. I also believe there ought to be a tolerance in there somewhere, so that a farmer who is not equipped to test his butter from the standpoint of butterfat or moisture content would have a little leeway and would not be haled into court.

The CHAIRMAN. At present they have a tolerance of 2½ per cent. The rule is 82½ per cent.

Mr. TEN EYCK. What Mr. Reid means is that if this bill is enacted into law the farmer should have a tolerance.

Mr. REID. Yes.

Mr. ASWELL. But if the farmer is exempted you do not care about the tolerance, do you?

Mr. REID. No; we do not care about it.

Mr. ASWELL. Well, he is exempted, according to the statement just made.

The CHAIRMAN. There is no suggestion here to change that part of the statute.

Mr. FARRELL. You mean the bill as originally drawn, with the double standard, the fat requirements and the moisture clause in it.

Mr. ASWELL. That does not affect the original bill.

Mr. FARRELL. Yes. The bill we are considering here has two clauses relating to fat and moisture.

Mr. ASWELL. That is not affected.

Mr. CLAGUE. Certainly; it absolutely changes it. It makes the law 16 per cent.

Mr. VOIGT. Yes; but this only applies to the men whose business is the manufacture of butter.

Mr. CLAGUE. That, in my opinion, is just where you are wrong. This defines what butter is.

Mr. VOIGT. But, pardon me, the definition holds good only for the man who is mentioned in the law, and that is the manufacturer of butter.

Mr. ASWELL. And this does not change that.

Mr. TEN EYCK. Well, I am going to hold the legal membership of this committee to account if they make a mistake. I am going on their advice.

The CHAIRMAN. Is there anybody that desires to be heard in opposition to the bill? If not, we will consider the hearings closed, and the committee will take the matter up.

Mr. J. S. ABBOTT (Institute of Margarine Manufacturers). Mr. Chairman, inasmuch as I asked, on behalf of the organization I represent, that the hearings be extended until we could hear what they wished in regard to the bill, I think it would be respectful to the committee for me to say a word. I have been unable to learn whether the oleomargarine people are interested in this bill or not.

The CHAIRMAN. It does not make any difference whether they are, because we are not dealing with oleomargarine. The bill has nothing to do with oleomargarine, and we are not going to discuss that proposition.

Mr. ASWELL. Mr. Chairman, I am a member of this committee, and I think the gentleman should have the courtesy of being permitted to make his statement. He is not discussing oleomargarine.

The CHAIRMAN. He must confine himself to the subject matter.

Mr. ASWELL. He wants to make an explanation of his statement.

The CHAIRMAN. But the witnesses must confine themselves to the subject before the committee.

Mr. ASWELL. He wants to make a respectful statement. And I want to protest against the chairman deciding himself what this committee shall hear discussed.

The CHAIRMAN. The chairman will undertake to enforce the rule; that is all.

Mr. ABBOTT. Mr. Chairman, the organization that I represent makes something like 100,000,000 pounds of butter. I am not here, however, to discuss that. I simply want to say that I have not heard from our organization, and I do not know what their opinion is. I do not know whether they want to offer additional amendments to this law that you are amending, and I do not know what their attitude will be toward this standard.

I was asked my individual opinion about this bill the other day, and gave it in harmony with my previous opinion on the subject, as expressed in the stand-

ard adopted by the United States Department of Agriculture, or rather by the Secretary of Agriculture, in 1919.

The questions that were asked me in that connection were of a kind to give the impression, I think, that my individual opinion was connected up with the opinion of the industry I represent. I want to make it clear here that that is incorrect, because I do not know what the opinion of the industry I represent is. The opinion I gave you was the opinion arrived at by nine men constituting the joint committee on definitions and standards, three of whom represented the United States Department of Agriculture, three of whom represented the Association of Official Agricultural Chemists of the various States of the United States, and three of whom represented the Association of American Food and Drug officials.

Mr. McKAY. Were those men all chemists, or were they experienced butter men?

Mr. ABBOTT. They were chemists, as I said the other day when you were not here. We were authorized and directed to consider this standard for butter that was promulgated in 1906 by the Secretary of Agriculture, acting under an authorization of the Congress of the United States. We reaffirmed the decision of the Secretary of Agriculture at that time, and the Secretary of Agriculture reaffirmed and reannounced the standard in 1919 that had been previously announced by the Secretary in 1906.

Mr. VOIGT. Will you permit me to interrupt you for a moment? Mr. Chairman, I am obliged to leave. I am in favor of this double standard bill. The chairman has suggested that perhaps the drafting service of the House will improve the language of the bill. I think the motion I am about to make will meet the approval of the members and the chairman.

I move that the hearings on this bill be closed to-day, and that the chairman request the drafting service to look over the bill carefully and suggest any amendments in the wording, and that when the committee adjourns to-day it will adjourn until to-morrow morning at 10 o'clock for the consideration of the bill.

(The motion was duly seconded.)

The CHAIRMAN. It is for the committee to determine whether you want to consider it or not. I have no opinion whatever. I introduced the bill as it came to me from the Department of Agriculture. If the committee wants to take it up and overcome the difficulties, I assume action will have to be taken immediately. Otherwise it can just as well go over until some future session. I think the committee might properly determine whether it wants to consider that now, and if it is to be taken up for consideration in the House I presume it will have to be reported immediately. I take it that after this week we will probably not have a quorum in the House. It is for the committee to determine whether it wants to dispose of the matter now so as to overcome the difficulty over here in Massachusetts.

Mr. VOIGT. If we put it off until to-morrow morning that will give some of us a chance to telegraph to our dairy and food commissioners and find out what they think about it.

Mr. TEN EYCK. I think that is a good idea.

(The motion, having been duly seconded, was unanimously agreed to.)

Mr. ABBOTT. Some questions were asked in regard to the merits of the standard. I had not gone into that at all, but out of courtesy to those who asked me the questions I answered to the best of my ability. I want to say in this connection that the standard of 82½ per cent fat, which our committee adopted, was adopted by these nine men on the basis of the information before us.

It is true that some of the foreign countries have a moisture standard of 16 per cent. If you will take the trouble to look up the information in the department records, you will find that while it is true they have those standards it is also true that they do not make their butter right up to the 16 per cent moisture standard.

The CHAIRMAN. How much does it fall below?

Mr. ABBOTT. They make a good butter and sell what they consider a good butter, and their moisture generally runs from 13½ to 14 or 15, and of course occasionally as high as 16 per cent. But in general the information before us was to the effect that they were usually around, I would say, 14 per cent.

Mr. ASWELL. Are you for this bill or opposed to it?

Mr. ABBOTT. Just a minute. Pardon me if I continue just a little longer.

My understanding is—and if I am not correct on that there are gentlemen

here who can correct me—at the time we had this bill under consideration they wanted a moisture standard of 16 per cent, and my information is they did not ask for any tolerances, or there was nothing said about tolerances.

Now, when we made the 82½ per cent butter fat standard we did it in consciousness of the fact that if that were to continue the standard there would be a tolerance, whether we said anything about a tolerance or not. That is, the courts and the juries would allow a tolerance, as they should do.

The CHAIRMAN. Have the courts passed upon the point as to the tolerance?

Mr. ABBOTT. I do not know. I say they will, as a matter of general justice; they will allow a leeway or tolerance.

Now, mind you, immediately after the announcement of this 82½ per cent standard the United States Department of Agriculture issued a press notice to the effect that their operations would be on the basis of 80 and 16. Is not that correct?

Mr. MCKAY. Not at the beginning; they did later on.

Mr. ABBOTT. How much later?

Mr. MCKAY. Why, sometime later. I remember I telegraphed down here to enter a protest against the standard, and the late Secretary Wilson signed the standards recommended by your committee without knowing what he had signed.

Mr. ABBOTT. I beg your pardon, Mr. McKay. I am talking about Secretary Houston, in 1919, immediately after the action of the committee of which I was a member.

Mr. MCKAY. Oh, yes; I understand.

Mr. ABBOTT. And immediately after we announced the standard the Secretary approved it and announced it. Immediately after that the Department of Agriculture issued a press notice to the effect that their operations in the enforcement of the food and drugs act would be based on an 80 per cent standard. That was a tolerance.

Mr. FARRELL. Have you a copy of that notice?

Mr. ABBOTT. I have not, but I have just dictated a letter to the Bureau of Information of the Department of Agriculture asking for a copy.

Mr. MCKAY. Mr. Chairman, may I interpose right here to explain the situation?

The CHAIRMAN. We would like to have it straightened out.

Mr. MCKAY. The Department of Agriculture has stated verbally to us that they would not seize butter containing 80 per cent or more fat, but they have seized butter that contained more fat. That was because of the way they take samples, taking 1 package out of 10. Then when we go to get that butter released by the authority of the United States district attorney, he says, "The Department of Agriculture has thrown this regulation out here into our lap, and therefore when we release that butter under bond you must reprocess that butter to 82½ per cent." And the department has never asked the United States district attorney to do otherwise, but they would be satisfied with the 80 per cent.

Mr. ABBOTT. Perhaps you and I together could dig up that press notice. I saw it and took it to the Chief of the Bureau of Chemistry in person to inquire about it.

In this connection, as I said in the beginning, I do not want it understood that my personal views, as they were asked for and as I gave them, had anything to do with the views of the organization that I am connected with. One gentleman asks, "Do you advocate this standard of 82½ per cent?" Yes. "Then you left the Department of Agriculture and went to work for the oleomargarine industry?" Yes; I said. Now, there might be a mean interpretation put upon that remark, which I do not think was authorized or warranted. There were eight men on this standards committee that adopted this standard who have not gone to work for the oleomargarine industry.

Another gentleman said that oleomargarine is a fraud, which would carry the implication with it that everybody engaged in the business is engaged in a fraudulent business. I take exception to that, Mr. Chairman and gentlemen of the committee, as unwarranted and untrue.

The CHAIRMAN. Of course, the manufacture of oleomargarine is an honorable business. Nobody has suggested anything else. What we object to is selling oleomargarine as butter. The fraudulent sale of it is what is objected to.

Mr. ABBOTT. We do not do that, Mr. Chairman.

Mr. ASWELL. Before I go I would like to know how you stand on this bill.

Mr. ABBOTT. If I were acting on this bill as a representative of the people, as I was when I was in the Department of Agriculture, I would do exactly what I did then, with the facts before me, unless the facts since then have changed.

Mr. ASWELL. You would stand for 82½ per cent?

Mr. ABBOTT. If I were asked by our industry to make a recommendation on this standard, I would recommend that they do not oppose it. It would suit me, if I were in the business, for the butter standard to be reduced as low as possible.

Now, of course, I am talking a good deal longer than I should, considering that I am giving my personal views all the time. But if I were talking from the standpoint of a creamery butter maker, who can control his product, I would say, do not exempt the farmer. If I were talking from the standpoint of justice I would say, exempt the farmer. Because any man in this world knows that a farmer out here in the country on a hot summer day can not work the water out of his butter to save his soul, I do not care how good a butter maker the housewife may be.

I think I have nothing more to say.

The CHAIRMAN. Thank you very much, Mr. Abbott. Without objection, the committee will stand adjourned until 10 o'clock to-morrow.

(Whereupon, at 11.35 o'clock a. m., the committee adjourned to meet at 10 o'clock a. m. to-morrow, Thursday, June 22, 1922.)

MINING IN WICHITA GAME RESERVE.

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Wednesday, June 21, 1922.

The committee met at 11.40 o'clock a. m., Hon. Gilbert N. Haugen(chairman) presiding.

The committee then proceeded to the consideration of H. R. 9136, which is here printed in full, as follows:

"A BILL To authorize the leasing for mining purposes of unallotted lands on the Wichita Game Reserve, Oklahoma.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That lands reserved in Oklahoma in what is known as the Wichita Game Reserve may be leased for mining purposes with the approval and under regulations prescribed by the Secretary of Agriculture."

STATEMENT OF L. M. GENSMAN, A REPRESENTATIVE IN THE CONGRESS FROM THE STATE OF OKLAHOMA.

The CHAIRMAN. Mr. Gensman, I understand that you desire to make some statement with reference to the bill which you have introduced. The committee will be glad to hear you.

Mr. GENSMAN. The bill is H. R. 9136, which provides that lands reserved in Oklahoma in what is known as the Wichita Game Reserve may be leased for mining purposes with the approval of and under regulations prescribed by the Secretary of Agriculture.

This Wichita Game Reserve is a tract of land that was set aside by the Government when the Kiowa and Comanche country was opened. Of course, in the order setting it aside the land was reserved as a game reserve only, but since then a number of men have gone out into the mountains there and located mining claims. Everybody has heard or read about the old Spanish gold mines in the Wichita Mountains. Float or placer gold is found in the creek bottoms there, and it is thought that somewhere in the game reserve there is a lode of gold-bearing rock which will in time be discovered.

There are a number of men who would like to mine that land. Of course, it is prospected, but they would like to get the benefit of their prospecting when they discover gold, if they do. This provision will not in any way interfere with the game or anything else.

Mr. ASWELL. How much land is there in this reserve?

Mr. GENSMAN. I can not tell you the number of acres. It is probably equivalent in size to two or three townships.

The Secretary of Agriculture has addressed a communication to the chairman of this committee, commenting favorably upon the bill. I ask that that be made a part of the record.

The CHAIRMAN. Without objection, the Secretary's letter will be incorporated in the record.

(The letter referred to is here printed in full as follows:)

DEPARTMENT OF AGRICULTURE,
Washington, January 18, 1921.

Hon. G. N. HAUGEN,
House of Representatives.

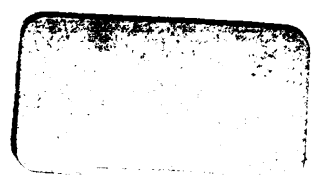
MY DEAR MR. HAUGEN: Reference is made to your letter of January 9, transmitting, for recommendation, a copy of H. R. 9136.

I am glad to recommend that favorable action be taken on this bill, which, if enacted, will provide for exploitation of minerals on the Wichita Game Reserve under rules and regulations to be prescribed by this department under a leasing system. The administration of the game preserve will not, in my opinion, be adversely affected by the proposed legislation and an opportunity will be afforded to the public permitting prospecting, development, and utilization of the mineral resources on the preserve.

Very sincely yours,

HENRY WALLACE, *Secretary.*

(Thereupon, at 11.45 o'clock a. m., the committee adjourned.)




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